



APPEAL OF DECISION OF ZONING ENFORCEMENT

March 7, 2022

Zoning Board of Appeals

380 Great Road
Stow, Mass 01775

Chair

Mark Jones

Members

William Byron
Ernie Dodd
David Hartnagel
Andrew J. DeMore

Associate Members

Andy Crosby
Leonard Golder
Michael Nail
Ruth Kennedy Sudduth

Staff

Karen Kelleher

Public Hearing Presentation By Mark D Forgues

9 White Pond Road
39 Adams Drive
(Mailing Address)
Stow, Mass 01775

Dear Mr. Chair and Zoning Board of Appeals Members,

I appreciate you taking the time to review my argument of the issues at the three properties that now require zoning enforcement. My presentation will make it clear that history and the facts prove that grandfathering is no longer in effect. That two of the parcels do not and never have met the requirements to be grandfathered for an auto dealership.

Never Ask Permission is the Pattern for the 18 years Mr. Presti has owned the property. He has never applied for a Special Permit and when he thought he may have been told he needed one back in 2010 he reached out to the zoning enforcement officer to convince him grandfathering applied on these properties. During the Erkkinen ownership a couple of Special Permits were initiated but went null and void as the conditions were never met by the applicant. Mr. Erkkinen knew it was a requirement of the property and not a grandfathered use. Why did this change when Mr. Presti purchased the property?

What the Board needs to understand is the abutters see the back of the property where trash dumpsters, loading and unloading of vehicles, deliveries of all kinds and the traffic of the illegal uses (Commercial trucks and Buses) are what we must endure. Although the uses change as does his tenants he still never applies for a Special Permit. The problem has not improved and has just increased in intensity over Mr. Presti's ownership. He looks at the dollar sign and not the disruption he has caused the abutters.

I have no litigation with the Town of Stow regarding this issue or any other issues. I understand I have every right to be heard as a separate abutter who is being aggrieved by the illegal uses and expansion of the same on the properties located at 84-102 Great Road, Stow 01775. Now owned by Richard Presti, Presti Family Limited Partnership, 92 Great Road, Stow, Ma Deed Book #42728-Page 271 and 84 Great Road, Stow, Ma Book #44389-Page 43. *See Attachments and the Map identifying the 3 Parcels*

The below note is an excerpt of a decision from the Appeals Court for the Commonwealth of Massachusetts dated September 16, 2021, from Cases numbered #20-P-611 and #20-P-696. Page 18.

In addition, we have found nothing in our case law or in c. 40A that forecloses multiple or successive requests for zoning bylaw enforcement by different aggrieved persons (such as other abutters). I have attached a copy of this decision for your review if needed.

The subject of grandfathering of these three parcels is the issue. The Erkkinen Family only owned 92 Great Road, Stow in 1968. They owned and operated Erkkinen Buick for many years **permanently closing on April 15, 1992, after being in business for 52 Years.** This is a Fact. *Affidavit Attached*

March 17, 1970, the home and shed at 102 Great Road, Stow was purchased by Toivo and Lillian Erkkinen. This is after the 1968 Zoning Bylaws went into law. Wayne Erkkinen lived there for many years. The house and shed were later torn down. This area was used as a used auto dealership after Erkkinen closed its dealership in 1992. Steppingstones School leased the building and part of the property to the west of the building for a playground at 92 Great Road, Stow (this was the old Erkkinen Dealership). The parking in the front of the building was used to drop the school kids off and pick them up. These are Facts.

No car dealerships were located on 92 Great Road for the next 19 years. 92 Great Road lost its grandfathering during the time Steppingstones School occupied the property and without a special permit is not allowed to re-open.

William T Brooks/Stow Auto Sales was licensed at 92 Great Road, Stow from 1993-1998. The license was issued to 92 Great Road, Stow. This part of the property was occupied by Steppingstones School and the auto sales operated on 102 Great Road. A permit was issued to build a temporary shed which they used as their office. In 1998 the Stow Auto Sales closed, and the license revoked due to non-payment of taxes. This is a Fact.

Steppingstone School vacated the property located at 92 Great Road, Stow in June 2012. After being there for 19 years. Never in the 19 years was the property at 92 Great Road used to sell cars.

Infinite Auto Sales moved into the building starting on 11/27/2012. The license was issued to 102 Great Road. These are Facts.

From January 1998 until September 27, 2005 (Artisan Automotive) no licenses were issued to 92 Great Road, Stow. In 2005 the school still occupied the property, and no part of 92 Great Road was used for a car dealership. This gap of more than 2 years disqualifies grandfathering on this parcel. This is a Fact.

All Class II licenses from 1999 to 2021 excluding 2005 were issued to 102 Great Road. Recently, I have questioned the Town about the issuing of a license for 84-92 Great Road, Stow, for the 2022 year. The town administrator's office answered and stated as quoted below from the e-mail I received on February 1st, 2022.

"There has been long-standing question with the assigning of "102 Great Road" as an address. According to my research, 102 is an additional street number given to a parcel that already had an assigned street number. Our intention was not to provide additional access to the owner, but to correct the incorrect numbering that did not match town records. We have informed the property owner and the applicants that going forward 102 is not a legal address for the Class II license."

After longer than 20 years the Town is saying they have been issuing licenses to a not legal address for Class II Licenses. This says one thing and that is the Parcel of land shown on the attached map located at R29-84 has the actual address as 102 Great Road,

Stow. This parcel of land was not purchased by the Erkkinen family until March 17, 1970. At the time of purchase there was a home and a shed located on the property. If this was a grandfathered use the owner should have submitted a Special Permit showing a site plan, landscaping, etc. especially when the home and shed was torn down. This is a Fact.

The Town is now admitting their error and all Automobile Dealerships licenses issued to 102 Great Road now or in the past were also illegal and should be revoked.

If grandfathering was allowed on this lot. Under G.L.c40A.s.6 “a nonconforming use of land. **If Lawfully Created** is exempt from subsequently enacted zoning provisions.” Oakum Sand and Gravel Corp v, Town of Oakum.54 Mass.App.Ct.80 (2002) **A Special Permit** would have been required to allow an Auto Dealership at 102 Great Road, Lot B as an expansion/change of use so grandfathering is not allowed on this property as it **was not Lawfully Created**.

No Special Permit was obtained. No grandfathering is allowed on this property as it was purchased after the zoning bylaws were enacted in 1968. This is a Fact.

The Select Board has also issued a Class II license to 84-92 Great Road, Stow for the 2022 year. This expansion of use on to 84 Great Road, is a large expansion and not a legal use. Only one thing is allowed on 84 Great Road and that is a home/garage/barn for residential use only. This property known as Parcel A-1 was purchased in 1990 and no grandfathering is allowed on this property. Any new uses would require a Special Permit.

Due to the issuing of a Class II Auto Dealers License including 84 Great Road, Stow for 2022 year allowing 60 additional vehicles I am requesting that the license be revoked and a Cease and Desist be ordered to stop all illegal activities on this Parcel of Land. Including the car dealership, contractor’s business, storage of landscaping equipment, buses, etc. Complying with all the By-laws and General Laws accepted by the Town of Stow. The property at 84 Great Road has never been used as a car dealership or for accessory uses and is not allowed as per the Zoning Bylaws.

After reviewing the decision of the board in 2017, the facts prove that the board’s decision regarding the automobile dealership grandfathering was wrong and should be reversed. The property Lotus in 1968 would have only been 92 Great Road (R29-83 Lot A).

Due to the facts above regarding no car sales on 92 Great Road which ended in 1992 and the ending of the grandfathering I am requesting the Board to initiate a Cease-and-Desist Order for all auto related uses on 92 Great Road, Stow.

Due to these Facts above the Board should require a Cease-and-Desist Order for all Auto Dealerships located or licensed on Parcel 29-84 Lot B and Parcel A-1. These parcels are not grandfathered, and Class II Auto Dealerships with outside display are not allowed in a Business District.

The Board did due a Powers Test and decided the use was allowed. However, the board did not take in consideration that the properties at 84 Great Road (Parcel A-1 Purchased

in 1990) and 102 Great Road (Parcel R29-84/Lot B Purchased in 1970) were not owned by the dealership or owner of the property until after the Town of Stows By-Laws were enacted in 1968. Or that Steppingstones School was there for 19 years and the property at 92 Great Road was not used as car dealership during that time.

This ruling should be reversed which the Board has the right to do at any time even if it is in litigation with another abutter. Again, I am a different abutter, and my complaint should be heard, and the issues corrected as soon as possible.

My other concern is that the credibility of Mr. Erkkinen's affidavit presented in 2017 is untrue. He states at the bottom of page one that.

"In 1968, vehicles onsite would have consisted of approximately.

100-120 new and used cars

20-25 employee cars

40-50 client's cars

20-30 vehicles of other tenants and their clients

180-225 Total vehicles on site

The number, and "activity level" at that time, far exceeded the current uses on the site today."

The reason I mention this is back in 1968 when the zoning by-laws were enacted the only allowed Parcel of property that was owned by the Erkkinen family is 92 Great Road, Stow Parcel R29-83. To have a restaurant/gas station building on this lot and 180-225 vehicles, along with any kind of travel lanes is **physically impossible**.

Back in 1968 there was a house and shed on 102 Great Road, and 84 Great Road was a wooded lot except for a house/barn.

There was also a 20 foot right of way which needed to stay clear for emergency vehicles located at the back of Lots A&B allowing access to 84 Great Road.

I could not believe anything he says would be credible or allowed as evidence and believe that common sense would make you believe the same.

I have attached a copy of his affidavit for your review as well.

The Selectboard has issued licenses for multiple Class II car dealers for the 2022 year. The licenses state that 144 cars in total can be displayed for sale on the property. If the sale of automobiles were allowed at 92 Great Road this would be physically impossible. Multiple licenses as I am told are ok to be issued but, in my opinion, they should never exceed the number of cars able to physically fit on the property. If the 3 license holders issued for 2022 decided to open and bring in the maximum cars allotted by the license issued, where would they place the vehicles?

After reviewing the Middlesex South Registry of Deeds there shows no recorded Special Permits regarding the use of 84 or 102 Great Road for Automobile dealerships or any related uses as required by the Town of Stows By-Law 9.2.10. Any other Special Permits

if applied for have never been completed due to the facts the applicant did not meet the requirements of the Special Permit. Any if applicable would at this time have Lapsed and are not valid according to Town of Stows By-Laws 9.2.8 and 9.2.8.1.

There have also not been any Special Permit requests for 92 Great Road to re-open after loss of the grandfathering.

It would not surprise me that all the other abutters also file complaints about these ongoing concerns.

The result should be that all car dealerships be closed for the entire locus now owned by Mr. Presti. The address at 92 Great Road possibly could be reopened with a Special Permit (Keeping to all General and Zoning By-Laws) only allowing outside display on that same property. All other business uses that are only allowed due to the auto dealership as an associated use also should be closed until Special Permits have been applied for and obtained by each business. An example would be repair shops not owned by the auto dealership.

No Class II licenses are allowed on 84 Great Road and the current 2022 license issued to Richard Presti needs to be revoked. All other activities on this property needs to be stopped, landscaping companies, tree companies, bus storage, contractors use, and all other business-related activities that are not an allowed use or do not have a Special Permit.

My belief is the By-Laws and General Laws of the Town of Stow, as do all other towns should be followed, and the residents should not have to bring a property owner to court to resolve obvious illegal activities. I am hoping that this Board resolves the problems on this property that has been going on for years. Abutters have been complaining 10+ years about this property and the owner either ignores or has done nothing to permanently resolve any of the issues.

The General Laws and The Zoning Bylaws are laws that all other business owners must comply to, and the Board enforces.

I want to thank the Chair and all the Board members and staff who volunteer to do such a difficult job.

Regards,

Mark D Forgues

Charted History of 84, 92,& 102 Great Road, Stow /3 Separate Parcels

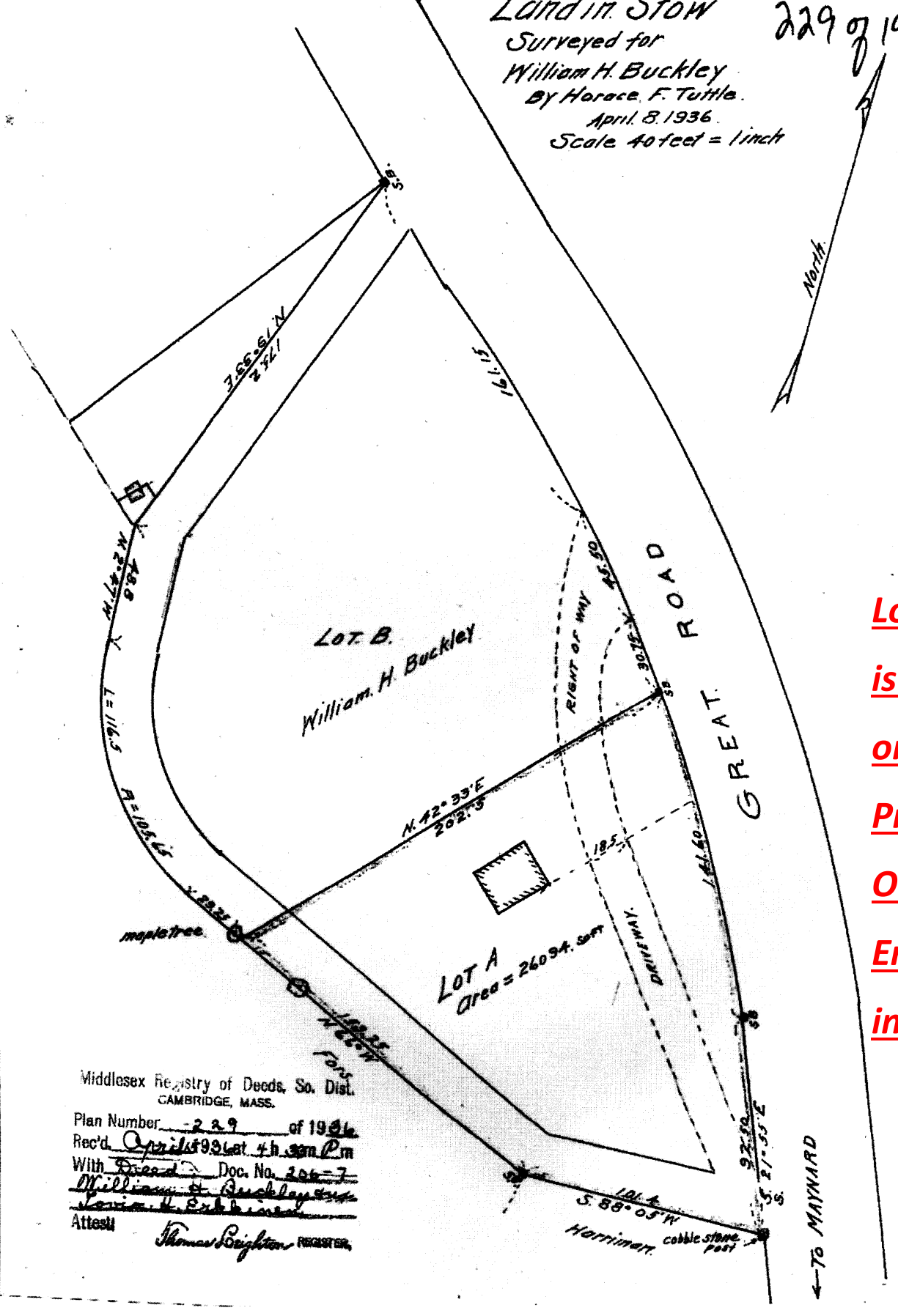
April 8, 1936	Parcel R-29-83 Lot A	92 Great Road, Stow	Purchased by Toivo & Lillian Erkkinen Owned and Operated a Restarant and Gas Station
1940	Parcel R-29-83 Lot A	92 Great Road, Stow	Erkkinen Auto Dealership Opened
1968	Zoning By-Laws were Enacted	Town of Stow	
March 17, 1970	Parcel R-29-84 Lot B	102 Great Road, Stow	Purchased by Toivo & Lillian Erkkinen No Grandfathering Allowed Purchased After Zoning By Laws Enacted
<p>If grandfathering was allowed on this lot. Under G.L.c.40A.s.6 "a nonconforming use of land. If lawfully created is exempt from subsequently enacted zoning provisions." Oakham Sand and Gravel Corp v. Town of Oakum. A special Permit would have been required to allow an Auto Dealership at 102 Great Road as an expansion/change of use so grandfathering is not allowed on this property as it was not Lawfully Created.</p>			
No Special Permits Issued, No Grandfathering allowed			
December 31, 1990	Parcel A-1	84 Great Road, Stow	Purchased by Wayne Erkkinen No Grandfathering Allowed Purchased After Zoning By Laws Enacted No Special Permits Issued
April 15, 1992	Erkkinen Buick Closed	92 Great Road, Stow	Grandfathered Use allowed up to closing date
1993-June 2012	Steppinstones School Leased West side of Building and Playground area	92 Great Road, Stow	No Automobile Dealership occupied the building or playground to west of building Front of Building Left Open to Drop Children Off
1993 -1998	Stow Auto Sales	92 Great Road, Stow	Class II license issued to 92 Great Road Never used 92 Great Road to sell cars Occupied a small portion of 102 Great Road, Not Grandfathered 92 Great Road was occupied by Steppingstones School
Jan 1,1999-Sept 27,2005 1993 - 2012	No Class II Licenses issued to No Car Sales on 92 Great Rd	92 Great Road, Stow	<u>This was longer than a 2 year period (5-1/2 Years)</u> <u>This was longer than a 2 year period (19 Years)</u> <u>Ending All Grandfathering for 92 Great Road</u> <u>As per Stows Bylaw 3.9.3</u>
1996	E.R.Kinen Auto Sales	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit
1997	E.R.Kinen Auto Sales	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit
1998	E.R.Kinen Auto Sales	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit
1999	E.R.Kinen Auto Sales	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit
2000	E.R.Kinen Auto Sales	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit
2001	E.R.Kinen Auto Sales	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit
2002	E.R.Kinen Auto Sales	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit

2003	E.R.Kinen Auto Sales	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit
5/7/2004	Parcel R-29-83 Lots A & B Parcel A-1	92-102 Great Road, Stow 84 Great Road, Stow	Purchased by Richard Presti
8/9/2004	E.R.Kinen Auto Sales	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit
8/10/2004	Bob Brenn Auto Sales	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit
2005	Bob Brenn Auto Sales	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit
2005	Apex Auto Sales	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit
Sept 27- Dec 31, 2005	Class II Licensed issued to Artisan Automotive for less than 3 months	92 Great Road, Stow (Lot A)	Grandfathering ended - No longer an allowed use
2006	Apex Auto Sales	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit
2007	Artisan Automotive License expired on Dec 31, 2007 / No Dealership occupied the property or sold any cars until Infinite Auto occupied the property and was licensed on November 27, 2012.	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit & Discontinued Use
<p>During the 4 year 11 month period of time of January 1st, 2008 until November 27, 2012 there was NO AUTO Dealership on the properties and there were NO CAR SALES on any of the properties. If the dealership is discontinued or abandoned for more than 2 years and according to Stows Bylaw 3.9.3 this discontinues grandfathering on all the properties.</p>			
2008	Artisan Automotive	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit Licensed but not open for business
2008	Apex Auto Sales	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit Licensed but not open for business
04/06/2010 - Year End	Omega Motor Sports	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit Licensed but not open for business
2009	Richard Presti	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit
2010	Richard Presti	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit
2011	Richard Presti	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit
2012-2021	Richard Presti	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit
2012-2021	Infinite Auto Sales	102 Great Road, Stow (Lot B)	No Grandfathering & No Special Permit
<p>Mr. Presti has never opened a dealership or sold one car on any of these properties and is not his Primary Business as required by law</p>			
2022	Car Lot Express (80 Cars)	92 Great Road, Stow (Lot A)	Grandfathering ended - Not an allowed use
2022	Yolo Moto (4 Cars)	92 Great Road, Stow (Lot A)	Grandfathering ended - Not an allowed use
2022	Richard Presti (60 Cars)	84-92 Great Road 84 Great Road Car Lot Express	Addresses licensed by the Select Board Not Grandfathered & Not an Allowed Use Grandfathering Already Ended & No Special Permit Issued

MAPS

6020-548 61
229 of 1936

Land in Stow
Surveyed for
William H. Buckley
By Horace F. Tuttle
April 8, 1936
Scale 40 feet = 1 inch



Lot A
is the
only
Property
Owed by
Erkkinen
in 1936

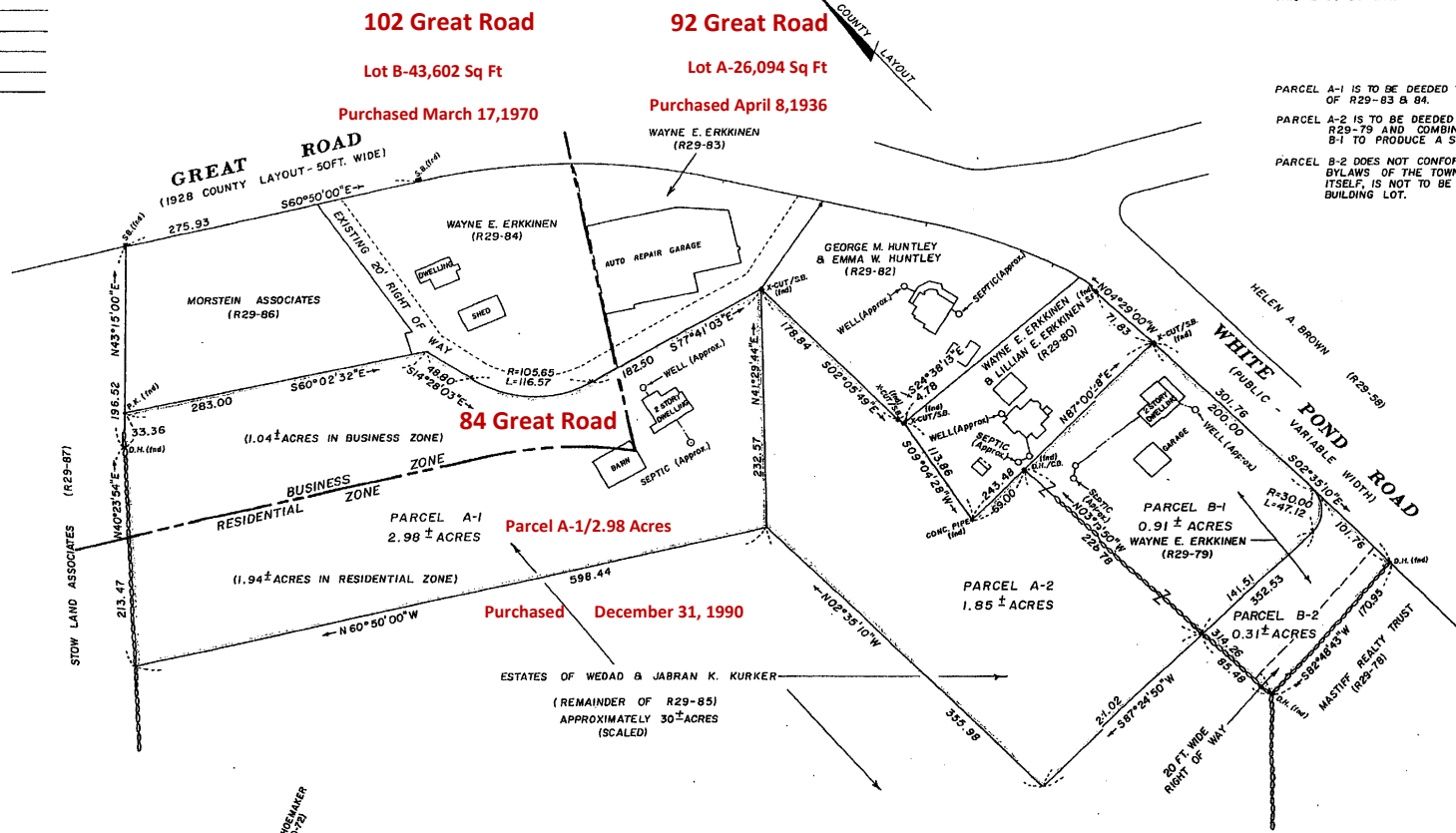
Middlesex Registry of Deeds, So. Dist.
CAMBRIDGE, MASS.
Plan Number 229 of 1936
Rec'd April 9 1936 at 4 h. 30 m. P.m.
With Deed Doc. No. 206-7
William H. Buckley
vs.
Erkkinen
Attest
Thomas Brighton REGISTER

Zoning By-Laws Were Enacted in 1968

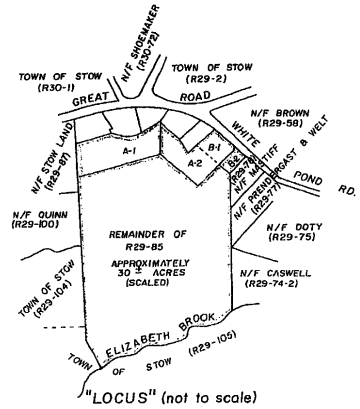
APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED.
STOW PLANNING BOARD
David W. [Signature]

DATE: 9/24/88

THIS PLAN IS MEANT AND INTENDED TO SUPERCEDE ALL PLANS WHICH PREDATE THIS ENDORSEMENT.

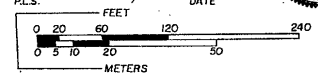


PARCEL A-1 IS TO BE DEEDED TO THE OWNER OF R29-83 & 84.
PARCEL A-2 IS TO BE DEEDED TO THE OWNER OF R29-79 AND COMBINED WITH PARCEL B-1 TO PRODUCE A SINGLE BUILDING LOT.
PARCEL B-2 DOES NOT CONFORM TO THE ZONING BYLAWS OF THE TOWN OF STOW AND, BY ITSELF, IS NOT TO BE CONSIDERED A BUILDING LOT.

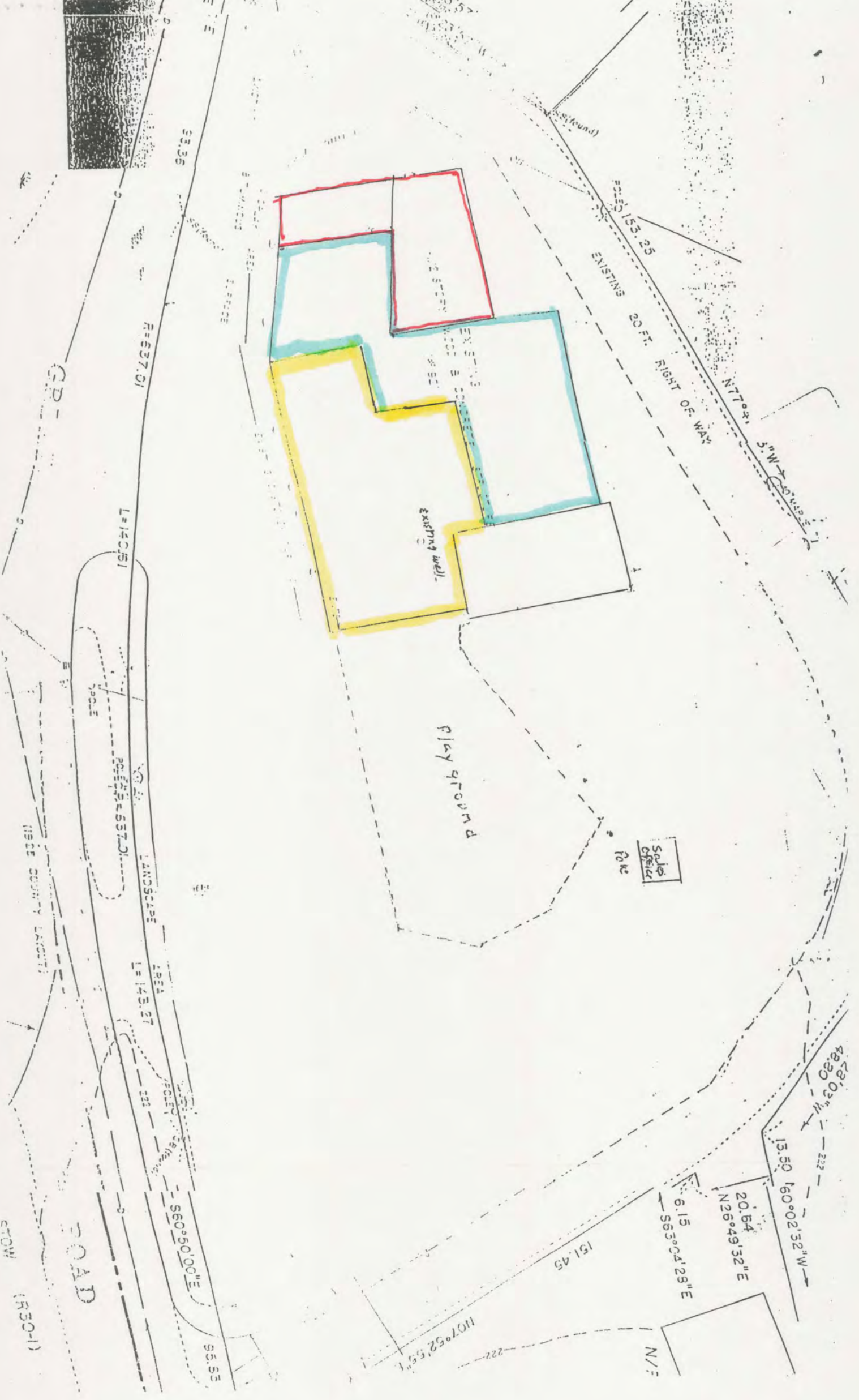
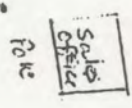
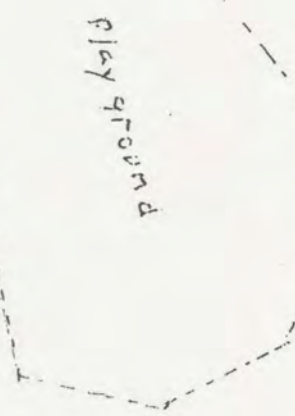
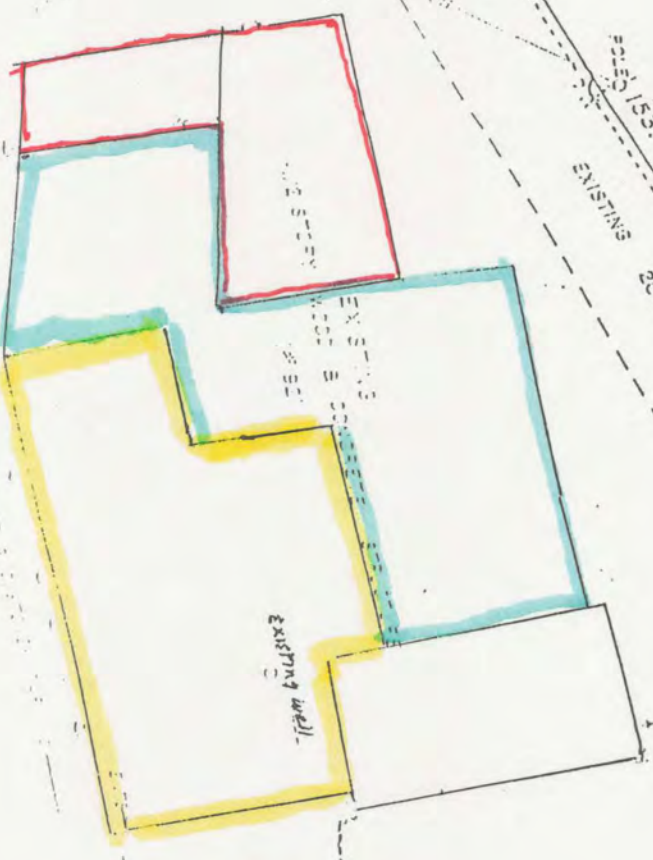


Middlesex Registry of Deeds,
Southern District
Cambridge, Massachusetts
Plan No. 1019 of 1090
Rec'd Dec. 31, 1990
at 1:48 P.M. in Doc No. 665
Rec'd, Bk. 20912 Page 282
Attest: *[Signature]* Registrar

I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.
Bruce A. Kankamp 9/24/88
P.L.S. DATE



PLAN OF LAND
IN
STOW, MASSACHUSETTS
PREPARED FOR
WAYNE E. ERKKINEN
9 WHITE POND RD. STOW, MA.
DATE: SEPTEMBER 24, 1988 SCALE: 1 IN. = 60 FT.
BRUCE A. KANKAMPA, P.L.S. SUDBURY, MA.



LICENSES

THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF STOW

This is to Certify that



**RICHARD PRESTI
CHAPEL PARTNERS, INC
84-92 GREAT ROAD
STOW, MA**

IS HEREBY GRANTED A
USED CAR DEALER'S LICENSE - CLASS II
TO BUY AND SELL SECOND-HAND MOTOR VEHICLES.

In accordance with the provisions of Chapter 140 of the General Laws with amendments thereto Richard Presti, Chapel Partners, Inc. is licensed to buy and sell second-hand motor vehicles at 84-92 Great Road, Stow, MA 01776 on premises described as follows:

EXTRACTS FROM GENERAL LAWS CHAPTER 146, AS AMENDED

Class 2. Any person whose principal business is the buying or selling of second-hand motor vehicles may be granted a used car dealer's license, provided, however, that such person maintains or demonstrates access to repair facilities sufficient to enable him to satisfy the warranty repair obligations imposed by section seven-N14 of chapter ninety. A used car dealer shall remain liable for all warranty repairs in accordance with the obligations imposed by said section seven-N14 of said chapter ninety. The registrar of motor vehicles shall promulgate rules and regulations defining sufficient repair facilities for the holder of a used car dealer's license. Also, see section 57 and 59.

Premises:

Entire eastern portion of 84-92 Great Road from area between Western boundary, Route 117 on North, ending on East with portion of main building for mechanical repairs. Includes sales building.

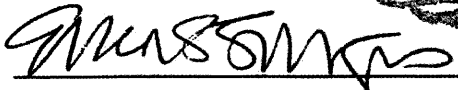
Assessor's Map R-29 Parcel 85A
Assessor's Map R-29 Parcel 83

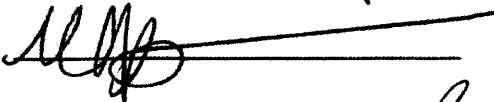
Conditions:

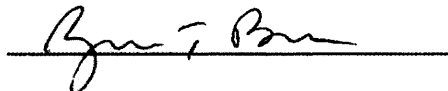
Outside storage/display for 70 vehicles

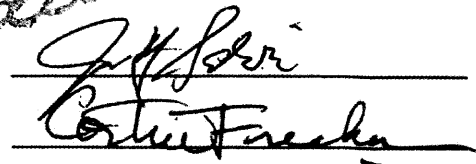
By order of the Select Board
this 23rd day of November, 2021.

License # 2022-29









THIS LICENSE EXPIRES APRIL 1, 2022

THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE UPON THE PREMISES

THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF STOW

This is to Certify that



**OLEKSII SAVCHENKO
CAR LOT EXPRESS, INC.
92 GREAT ROAD, UNITS 1 & 3
STOW, MA**

IS HEREBY GRANTED A
USED CAR DEALER'S LICENSE - CLASS II
TO BUY AND SELL SECOND-HAND MOTOR VEHICLES

In accordance with the provisions of Chapter 140 of the General Laws with amendments thereto **Oleksii Savchenko, Car Lot Express, Inc.** is licensed to buy and sell second hand motor vehicles at **92 Great Road, Units 1 & 3, Stow, MA 01775** on premises described as follows:

EXTRACTS FROM GENERAL LAWS CHAPTER 140, AS AMENDED

Class 2. Any person whose principal business is the buying or selling of second hand motor vehicles may be granted a used car dealer's license, provided however, that such person maintains or demonstrates access to repair facilities sufficient to enable him to satisfy the warranty repair obligations imposed by section seven N1/4 of chapter ninety. A used car dealer shall remain liable for all warranty repairs made and other obligations imposed by said section seven N1/4 of said chapter ninety. The registrar of motor vehicles shall promulgate rules and regulations defining sufficient repair facilities for the holder of a used car dealer's license. Also see section 57 and 59

Conditions

Eighty (80) cars for sale at any one time

Deliveries only on the days and hours of operation, but not on Sunday

License holder must comply with all conditions and requirements of the Board of Health

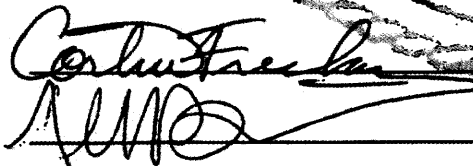
Hours of Operation:

Monday - Saturday: 9:00am to 8:00pm

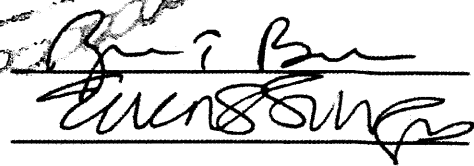
Sunday - By appointment only

Hours of operation for mechanical work are 8 a.m. to 8 p.m. Monday through Saturday

License Amended by order of the Select Board this 11th day of January 2022.



Carol Freeman



Ben B. Evers

THIS LICENSE EXPIRES JANUARY 1, 2023

THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE UPON THE PREMISES

THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF STOW

This is to Certify that



**AUSTIN SWINNEY
YOLO MOTO CO
92 GREAT ROAD, UNIT 2
STOW, MA**

IS HEREBY GRANTED A
USED CAR DEALER'S LICENSE - CLASS II
TO BUY AND SELL SECOND-HAND MOTOR VEHICLES

In accordance with the provisions of Chapter 140 of the General Laws with amendments thereto Austin Swinney, YOLO MOTO CO is licensed to buy and sell second-hand motor vehicles at 92 Great Road, Unit 2, Stow, MA 01776 on premises described as follows:

EXTRACTS FROM GENERAL LAWS, CHAPTER 140, AS AMENDED

Class 1. Any person whose principal business is the buying or selling of second-hand motor vehicles may be granted a used car dealer's license provided, however, that such person maintains or demonstrates access to repair facilities sufficient to enable him to satisfy the warranty repair obligation imposed by section seven N1/4 of chapter ninety. A used car dealer shall remain liable for all warranty repair obligations imposed by said section seven N1/4 of said chapter ninety. The registrar of motor vehicles shall promulgate rules and regulations defining sufficient repair facilities for the holder of a used car dealer's license. Also see section 57 and 59.

Conditions

- No more than four (4) cars on site and eight (8) cars inside
- A specific layout of how cars will be stored shall be developed and approved by public safety before any operations begin
- Deliveries only on the days and hours of operation, but not on Sunday

Hours of Operation

Monday - Friday: 12:00pm to 7:00pm

Saturday - 9:00am to 7:00pm

Sunday - By appointment only

Hours of operation for mechanical work are 8 a.m. to 4 p.m. Monday through Saturday

By order of the Select Board this 23rd day of November 2021

THIS LICENSE EXPIRES JANUARY 1, 2023
THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE UPON THE PREMISES

CRAIG MARTIN
GRANDFATHERING LETTER TO
MR. PRESTI



Building Department
380 Great Road
Stow, Ma. 01775

July 13, 2010

Mr. Richard Presti
Presti Family Ltd. Partnership
585 Massachusetts Avenue
Acton, MA 01720

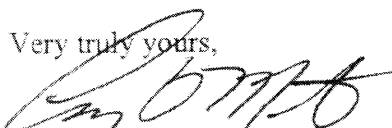
**RE: 84-102 Great Road
Stow, MA**

Dear Mr. Presti:

Please be advised that I have received your June 14, 2010 letter requesting a determination regarding the need for securing a Special Permit for several existing tenants currently renting space and storing items outside at the subject address. The tenants include, DEE Bus C., Ronaldo's Landscaping, Mark Morrel & Quality Tree Work.

After researching the building department files, the January 19, 2001 Zoning Board of Appeals decision relative to the property and conducting a site visit on July 8, 2010 to view the stored materials which consisted of pickup trucks, cars, snowplowing equipment, trailers, building materials, piles of cord wood, wood chipper and school buses, it is my determination that these types of uses are the same or consistent with the past uses of the site recognized as grandfathered uses by the Zoning Board of Appeals and that no Special Permits are required.

Very truly yours,


Craig D. Martin, P.E.
Building Commissioner

Building materials, piles of cord wood, wood chipper, Landscape companies, and school buses are also not an allowed use and were never there in 1968 when the Zoning Bylaws were enacted.

CC: Karen Kelleher-Planning Department

----- Forwarded message -----
From: Richard Presti <rich.presti@gmail.com>
Date: Wed, Apr 12, 2017 at 10:03 AM
Subject: 84-102 Great Rd, Stow
To: MARTIN CRAIG <building@stow-ma.gov>

If you review Mr. Presti's list and time frame of when occupancy began all uses except for the buses took occupancy after Mr. Presti purchased the property in 2004. The buses were only there about 4 years prior and it was only 2 or 3 buses. None of the uses listed below were on the property when Erkinen owned the property. Mr. Presti also states that all are in compliance with the 2001 decision and that is not true as the decision of 2001 was only for 92 Great Road Parcel 29-83 Lot A and all these listed below are on Parcel A-1 or 84 Great Road. This shows none of these are grandfathered uses.

Mr. Martin,

I thought I would take the opportunity to clearly state my thoughts, and reiterate our conversation of yesterday, regarding the current uses of the property, and how they relate to what is "allowed" both of right and as "grandfathered" uses.

As you know, the property has been used for vehicle related uses, including storage, sales and repairs (continuously and uninterrupted) for over 80 years.

In 2010, after a review by the Town to determine if a Special Permit was required for the then current tenants who were "renting space and storing items outside", it was decided that no Special Permit was necessary. Part of this decision was a 2001 ZBA decision that cited the then current uses. Interestingly, of the 4 tenants mentioned in the 2010 letter, 3 are still tenants and the 4th (a tree company), has been replaced by another tree company.

The current uses at the site consist of;

- | | |
|---|---|
| - DEE Bus (17 years) | Storage of buses |
| - Ronaldo's Landscaping (12 years) | Storage of trucks, trailers, equipment and materials |
| - Mark Morrel Construction (11 years) | Storage of trucks, trailers, equipment and materials |
| - MURPHY Tree (7 years) | Storage of trucks, trailers, equipment and materials |
| - Infinite Automotive (6 years) | Storage, sales, reconditioning, and repairs of vehicles |
| - Designscape Landscaping (6 years) | Storage of trucks, trailers, equipment and materials |
| - TSS Graphics (5 years) | Retail sign making business |
| - CJ Towing (2 years) | Storage of trucks and cars |
| - D'Allesandro Construction. (1 year) | Storage of trucks, trailers, equipment and materials |
| - Courtney Removal (1 year) | Storage of empty, clean dumpsters |

As you can see, the uses are in TOTAL conformance with the uses listed in the 2010 Zoning/Use letter by the Town which stated: "stored materials, pickup trucks, cars, snow plowing equipment, trailers, building materials, piles of cord wood, wood chipper, and school buses" which were determined to be "uses that are the same or consistent with the past uses of the site recognized as grandfathered uses by the Zoning Board of Appeals".

Other than Infinite Automotive and TSS Graphics, which actually "operate" their businesses on site, ALL the other users simply "store" vehicles, equipment or materials on the site.

Lastly, we briefly discussed the issue of "intensity" of use as it related to general traffic , noise etc. To my understanding, the zoning provisions in Town tend to strictly relate to use , and do not limit the peaks/valleys of that usage....recognizing the reality that many businesses experience such variances (Shaws the day before Thanksgiving, hardware stores in the spring, liquor stores before holidays).

Although I understand that there have been complaints regarding the property, it must be considered that the uses currently on the site are absolutely consistent with the past 80 years of (uninterrupted) similar uses, and that the abutting property owners were well aware of those uses , prior to purchasing their properties.

Lastly, the use of the two entry/exit points from the property are the logical , but more importantly safest to use , depending upon which way a vehicle is going or coming from. For example, trying to have vehicles that are leaving the site and intending on going east , but forcing them to use the west exit driveway, subjects them to the traffic congestion at BOTH the end of Red Acre Rd and Pompiticicut Rd....most likely significantly adding to the traffic problem.

In closing, I sincerely believe that all of the current users on the site comply with both the 2001 ZBA decision and the 2010 Zoning review that was performed, and are well within the grandfathered uses.

I appreciate the time you invested yesterday to investigate this issue, as well as your consideration of the above. If you require any additional information, please let me know, and I will provide it immediately.

Thank you.

DEEDS

er of said real estate is: George H. Stone. The Pfaudler Co. by Ran-
let Miner Ass't. Treasurer - - - - -

Middlesex ss. April 15, 1936. 4h. 14m. P.M. Rec'd & Recorded.

BUCKLEY et ux
to
ERKKINEN

* * * * *
* U.S. *
* Rev. *
* Stamp *
* \$3.00 *
* 4/14/36 *
* * * * *

1936

229

See plan opposite

SEE PLAN NO.

OF

KNOW ALL MEN BY THESE PRESENTS. That we, William H. Buckley and Kilda B. Buckley, husband and wife, of Stow, in the County of Middlesex and Commonwealth of Massachusetts, for consideration paid, grant to Toivo H. Erkkinen, of said Stow, with WARRANTY COVENANTS, a certain parcel of land with the buildings thereon, situated in said STOW, being shown as lot A on a plan of land in Stow, surveyed for William H. Buckley, by Horace F. Tuttle, dated April 8, 1936, to be filed herewith, bounded and described as follows: Beginning at the Northeasterly corner of the granted premises at a stone bound set in the ground on the Westerly side of Great Road; thence running Southerly by said Great Road, one hundred forty-one and 60/100 (141.60) feet, to a stone bound set in the ground; thence South 21° 55' East, still by said Great Road, ninety-two and 50/100 (92.50) feet, to a cobble stone post set in the ground at land now or formerly of Harriman; thence turning and running South 88° .05' West by said Harriman land, one hundred one and 4/10 (101.4) feet, to a stone bound set in the ground at land now or formerly of Fors; thence turning and running North 66° West, one hundred fifty-three and 25/100 (153.25) feet, on land of said Fors to a point at or near a maple tree at other land of these grantors; thence turning and running North 42° 33' East on other land of these grantors, two hundred two and 5/10 (202.5) feet, to a stone bound at said Great Road, at the point of beginning. Containing according to said plan 26,094 square feet. Said premises are conveyed together with the right to use for all purposes of a street or way a strip of land extending from the granted premises over the retained land of the said grantors to the Great Road, shown on said plan, the same being eighteen and 5/10 (18.5) feet in width along the boundary line between the granted premises and said retained land of the grantors, and being forty-five and 50/100 (45.50) feet in width where said proposed way joins said Great Road. Said premises are conveyed subject to the rights of way of all persons entitled to use the same over the strip of land, shown on said plan, along the Westerly and Southwesterly boundary of the granted premises, so far as the same are now in force and applicable. Said premises are a part of the same conveyed to us by deed of William H. Lord et al, dated July 1, 1929, and recorded with Middlesex South District Deeds, Book 5374, Page 19. Said premises are conveyed

subject to the taxes assessed January 1, 1936. WITNESS our hands and seals this 14th day of April, 1936. William H. Buckley (seal) Kilda B. Buckley (seal) COMMONWEALTH OF MASSACHUSETTS. Middlesex, ss. April 14, 1936. Then personally appeared the above named William H. Buckley and Kilda B. Buckley and acknowledged the foregoing instrument to be their free act and deed, before me Howard A. Wilson Notary Public. My commission expires March 25, 1943. - - - - -

Middlesex ss. April 15, 1936. 4h. 33m. P.M. Rec'd & Recorded.

One word over erasure.

KNOW ALL MEN BY THESE PRESENTS That I, Toivo H. Erkinen, of Stow, Middlesex County, Massachusetts, for consideration paid, grant to William H. Buckley and Kilda B. Buckley, husband and wife, as tenants by the entirety, of said Stow, with MORTGAGE COVENANTS, to secure the payment of Twenty-five Hundred Dollars payable five hundred (500) dollars on October 1, 1936, and four hundred (400) dollars on October 1 each year thereafter, with 5 1/2 per cent interest per annum, payable semi-annually, as provided in a note of even date, A certain parcel of land with the buildings thereon, situated in said STOW, being shown as lot A on a plan of land in Stow, surveyed for William H. Buckley, by Horace F. Tuttle, dated April 8, 1936, to be filed herewith, bounded and described as follows: Beginning at the Northeasterly corner of the granted premises at a stone bound set in the ground on the Westerly side of Great Road; thence running Southerly by said Great Road, one hundred forty-one and 60/100 (141.60) feet, to a stone bound set in the ground; thence South 21° 55' East, still by said Great Road, ninety-two and 50/100 (92.50) feet, to a cobble stone post set in the ground at land now or formerly of Harriman; thence turning and running South 88° .05' West by said Harriman land, one hundred one and 4/10 (101.4) feet, to a stone bound set in the ground at land now or formerly of Fors; thence turning and running North 66° West, one hundred fifty-three and 25/100 (153.25) feet, on land of said Fors to a point at or near a maple tree at land of William H. Buckley et ux; thence turning and running North 42° 33' East on land of said Buckley et ux, two hundred two and 5/10 (202.5) feet, to a stone bound at said Great Road, at the point of beginning. Containing according to said plan 26,094 square feet. Being the same premises conveyed to me by deed of William H. Buckley et ux, of even date, to be recorded herewith. Said premises are conveyed together with and subject to the rights of way set out or therein referred to. This mortgage is upon the statutory condition, for any breach of which the mortgagee shall

ERKKINEN
to
BUCKLEY
et ux

See Discharge, B~~...~~ 60

See plan opposite page 578.

JAN 13-56 AM 11:24 136RE***5.00

I, Toivo H. Erkkinen

of Stow, Middlesex

County, Massachusetts

~~being-unmarried~~, for consideration paid, grant to myself, Toivo H. Erkkinen and my wife, Lillian E. Erkkinen, husband and wife, as tenants by the entirety, both

of said Stow

with quitclaim covenants

the land in said Stow, with the buildings thereon, being shown as Lot A on a plan of land in Stow, surveyed for William H. Buckley, by Horace F. Tuttle, dated April 8, 1936 and recorded with Middlesex South District Deeds, Book 6020, Page 548, bounded and described as follows:
(Description and encumbrances, if any)

Beginning at the Northeasterly corner of the ~~premises~~ premises at a stone bound set in the ground on the Westerly side of Great Road; thence running Southerly by said Great Road, one hundred forty-one and 60/100 (141.60) feet to a stone bound set in the ground; thence South 21° 55' East, still by said Great Road, ninety-two and 50/100 (92.50) feet to a cobble stone post set in the ground at land now or formerly of Harriman; thence turning and running South 88° 05' West by said Harriman land, one hundred one and 4/10 (101.4) feet to a stone bound set in the ground at land now or formerly of Fors; thence turning and running North 66° West, one hundred fifty-three and 25/100 (153.25) feet on land of said Fors to a point at or near a maple tree at land of Buckley; thence turning and running North 42° 33' East on other land of Buckley two hundred two and 5/10 (202.5) feet to a stone bound at said Great Road at the point of beginning.

Containing according to said plan 26,094 square feet.

Said premises are conveyed together with the right to use for all purposes of a street or way a strip of land extending from the granted premises over the land of Buckley to the Great Road, shown on said plan, the same being eighteen and 5/10 (18.5) feet in width along the boundary line between the granted premises and said land of Buckley, and being forty-five and 50/100 (45.50) feet in width where said proposed way joins said Great Road.

Said premises are conveyed subject to the rights of way of all persons entitled to use the same over the strip of land, shown on said plan, along the Westerly and Southwesterly boundary of the granted premises, so far as the same are now in force and applicable.

Being the same premises conveyed to me by William H. Buckley, et al, by deed dated April 14, 1936 and recorded with Middlesex South District Deeds, Book 6020, Page 548.

Said premises are conveyed subject to a mortgage of \$15,000.00 held by the Hudson Savings Bank.

The consideration for this deed is less than \$100.00.

J. Lillian E. Erkinen

husband
wife of said grantor,

release to said grantee all rights of tenancy by the curtesy
dower and homestead and other interests therein.

Witness *in their* hands and seal, this *10th* day of *January* 19*56*

Toivo H. Erkinen

Lillian E. Erkinen

The Commonwealth of Massachusetts

Middlesex, ss.

January *10*, 19*56*

Then personally appeared the above-named *Toivo H. Erkinen*

and acknowledged the foregoing instrument to be *his* free act and deed, before me

Ralph H. Sullivan

Notary Public

My Commission Expires October 7, 1961

IN-1-70 AM 11:32 114RE **8.00

P 81

I, WILLIAM H. BUCKLEY, individually and I, ARTHUR R. TRAINOR,

~~EXECUTOR under the WILL of ADMINISTRATOR of the ESTATE of TRUSTEE of GUARDIAN
of - CONSERVATOR of - RECEIVER of - NOTARY of - JUDICIARY of - COMMISSIONER~~
KILDA B. BUCKLEY,

by power conferred by License to Sell of the Middlesex Probate Court, Case No. 435449, dated March 17, 1970

for * TWENTY THOUSAND (\$20,000.00) * and every other power,
paid, grant to TOIVO H. ERKKINEN and LILLIAN E. ERKKINEN, Dollars
~~the said~~ husband and wife, as tenants by the entirety,
of Great Rd., Stow, Mass.

The land with the buildings thereon, situated on the Southerly side of Great Road, so-called, in Stow, bounded and described as follows:

BEGINNING at a stone bound set in the ground at the Northwesterly corner of the premises at land now or formerly of Keith; thence running South-easterly along said Great Road, 470 feet, more or less; to a bound at land formerly of Harriman; thence turning and running South 88° 05' West 101.4 feet to a bound at land of said Harriman; thence turning and running North 66° West on land now or formerly of Fors, 182.5 feet; thence on a curved line one hundred sixteen and 5/10 (116.5) feet to a bound; thence North 2° 47' West, 48.8 feet to an angle; thence turning and running North 48° 12' West, 13.5 feet to an angle opposite the center of the well house; thence turning and running North 38° 39' East, 21.8 feet to a bound through the center of the pump house and well to a bound; thence turning and running South 51° 27' East 12.00 feet to an angle; the last two measurements being on land now or formerly of Crowell; thence turning and running North 17° 14' East 153.00 feet to the corner and bound first mentioned.

Saving and excepting herefrom so much as was conveyed by William H. Buckley et ux to Toivo H. Erkkinen, by deed dated January 1, 1936 and recorded with Middlesex South District Deeds, Book 6020, Page 548.

Said premises are conveyed subject to the rights of way of all persons entitled to use the same over the strip of land, shown on said plan, along the Westerly and Southwesterly boundary of the granted premises, sofaras the same are now in force and applicable.

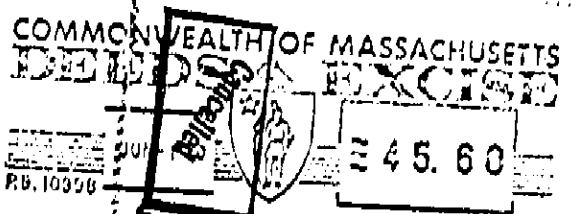
Being Lot B as shown on a plan entitled, "Land in Stow" surveyed for William H. Buckley" by Horace F. Tuttle, April 8, 1936, recorded with Middlesex South District Deeds, Book 6020, Page 548.

Being part of the premises conveyed to William H. Buckley and Kilda B. Buckley by deed of William H. Lord et al, dated July 1, 1929 and recorded with said Deeds, Book 5374, Page 19.

Witnessed and sealed this 28th day of MAY 19 70

MIDDLESEX COUNTY

012313



William H. Buckley
William H. Buckley
Arthur R. Trainor, Conservator

The Commonwealth of Massachusetts

Middlesex ss. May 28 19 70

Then personally appeared the above named WILLIAM H. BUCKLEY & ARTHUR R. TRAINOR and acknowledged the foregoing instrument to be their free act and deed, before me



Arthur S. Hall
Notary Public - Justice of the Peace
My commission expires July 16 19 76

17
P21

QUITCLAIM DEED

AND

RELEASE, EXTINGUISHMENT AND TERMINATION OF EASEMENT

James K. Kurker, of 8 Pawtucket Lane, Salem, Rockingham County, NH 03079,
George K. Kurker, of 10 Pepper Hill Drive, Winchester, Middlesex County, MA 01890,
Corrine M. Hill, of 55 Johnson Road, Winchester, Middlesex County, MA 01890, and
Donna H. Suffredini, of 217 East Emerson Road, Lexington, Middlesex County, MA 02173,
as tenants in common, (the "Grantors")

for consideration paid, in the full amount of Fifty Thousand (\$50,000.00) and no/100 Dollars

grant to

Wayne E. Erkkinen of 9 White Pond Road, Stow, Middlesex County, MA 01775 (the "Grantee")

with QUITCLAIM COVENANTS

Two parcels of land with buildings thereon, off the Southwesterly side of Great Road and off the Westerly side of White Pond Road, in Stow, Middlesex County, Massachusetts, shown as Parcel A-1 and Parcel A-2 on a plan entitled "Plan of Land in Stow, Massachusetts Prepared For Wayne E. Erkkinen, 9 White Pond Rd., Stow, MA." drawn by Bruce A. Kankanpaa, P.L.S., Sudbury, MA, dated September 24, 1988, (the "Plan") which Plan is to be recorded with the Middlesex South District Registry of Deeds contemporaneously herewith,

Parcel A-1 is more particularly bounded and described, according to the Plan, as follows:

- NORTHEASTERLY in part by land of Morstein Associates and in part by land of Wayne E. Erkkinen, 283.00 feet;
- EASTERLY still by said land of Wayne E. Erkkinen, 48.80 feet;
- NORTHEASTERLY still by said land of Wayne E. Erkkinen, by a curved line having a radius of 105.65 feet, a distance of 116.57 feet;
- NORTHERLY still by said land of Wayne E. Erkkinen, 182.50 feet;

*** MASS. ENCISE TAX: 228.00 ***
*** ADDRESS OF PROPERTY: PARCELS A-1 AND A-2 OFF GREAT ROAD, STOW, MA
1079
20942
282

SOUTHEASTERLY by Parcel A-2, 232.57 feet;

SOUTHWESTERLY by land of the Estates of Wedad Kurker and Jabran K. Kurker, 598.44 feet; and

NORTHWESTERLY by land of Stow Land Associates in part by a stone wall, in two courses measuring 213.47 feet and 33.36 feet, respectively.

Parcel A-1 contains, according to the Plan, 2.98 + acres of land.

Parcel A-2 is more particularly bounded and described, according to the Plan, as follows.

EASTERLY by Parcel B-1, in part by a stone wall, 228.78 feet;

SOUTHERLY by land of the Estates of Wedad Kurker and Jabran K. Kurker, 211.02 feet;

WESTERLY by said land of the Estates of Wedad Kurker and Jabran K. Kurker, 355.98 feet;

NORTHWESTERLY by Parcel A-1, 232.57 feet;

EASTERLY in part by land of George M. Huntley and Emma W. Huntley in two courses measuring 178.84 feet and 4.78 feet, respectively; and in part by land of Wayne E. Erkinen and Lillian E. Erkinen, 113.86 feet; and

NORTHERLY still by said land of Wayne E. Erkinen and Lillian E. Erkinen, 69.00 feet.

Parcel A-2 contains, according to the Plan, 1.85 + acres of land.

The Grantors hereby release unto the Grantee and hereby extinguish and terminate any and all easements, rights of way, rights of passageway, and all other rights whatsoever, whether any of the foregoing rights are recorded, are imposed or acquired by operation of law, or otherwise, in, on, under and over all property of the Grantee shown on the Plan, more particularly, the parcels designated thereon as Wayne E. Erkinen (R29-84), Wayne E. Erkinen (R29-83), Wayne E. Erkinen & Lillian E. Erkinen (R29-80) and Parcel B-1, including, without limiting the generality of the foregoing, all rights in and to the "Existing 20' Right of Way" shown on the Plan within the parcels identified as Wayne E. Erkinen (R29-84) and Wayne E. Erkinen (R29-83).

The Grantors hereby reserve certain easements (the "Easement"), for the purposes hereinafter set forth, in and over that twenty (20') foot wide portion (the "Easement Area") of said Lot A-2

which is within twenty (20) feet of the boundary line between said Lot A-2 and the remaining land of the Grantors shown on the Plan as "Remainder of R29-85". The Easement herein reserved is the right to slope and/or fill and maintain the Easement Area, and to remove trees incidental to these activities, in such manner as may be necessitated by the future construction of a roadway (the "Roadway") extended from said White Pond Road through Parcel B-2 and into said other land of the Grantors, said construction to be in accordance with the applicable rules and regulations of the Planning Board of the Town of Stow, or in accordance with any other applicable rules regulations or requirements of any official, board or agency having jurisdiction over the development of said land of the Grantors.

There is also reserved the right to enter upon the Easement Area for the purpose of surveying the same and conducting such tests of soil conditions and other similar tests (the "Testing Rights") as may be required by the applicable rules and regulations of the Planning Board of the Town of Stow, or in accordance with the applicable rules and regulations of such other official, board or agency as may have jurisdiction over the development of said land of the Grantees, in connection with the preparation of plans for the future construction of the Roadway.

The Grantors agree that:

1. Only those portions of the Easement Area will be sloped and filled, and only those trees within the Easement Area will be removed, as may be necessary to permit the possible future construction of the Roadway.
2. All portions of the Easement Area which are sloped and/or filled will be graded, loamed (three to four inches deep) and seeded, or otherwise stabilized by the use of mulch or similar materials.
3. Once the final grades of these sloped and/or filled portions of the Easement Area are established and are finally approved by said Planning Board or said official, board or agency, they shall not be altered by the Grantors except as may be required by said Planning Board or said official, board or agency.
4. Any portion of the Easement Area which is disturbed by the aforesaid surveying and testing will be restored, as nearly as reasonably possible, to the condition existing prior to such surveying and testing, except that the Grantors shall not be required to replace any trees or similar growth which are removed, it being understood that only such trees and similar growth will be removed as is necessary for such surveying and testing.

5. In connection with the exercise of the Easement and the Testing Rights, the Grantors shall indemnify and hold harmless the Grantee from and against all loss, claims, costs, damages, liabilities and injury due to any negligent act or omission of the Grantors and of all persons acting for, on behalf of, through, or under authority of, the Grantors. Prior to the exercise of the Easement and the Testing Rights, the Grantors shall provide certificates of liability insurance in the minimum amount of \$1,000,000.00 to the Grantee, naming the Grantee as a named insured.

The Easement and other rights herein reserved are appurtenant to so much of said other land of the Grantors and to Parcel B-2 as may be included in a development which is accessed from White Pond Road. The Easement may be exercised if, and only if, the Roadway is constructed from said White Pond Road in accordance with a subdivision plan approved by said Planning Board or in accordance with any other applicable rules, regulations or requirements of any official, board or agency having jurisdiction over the development of said land of the Grantors. The Grantee agrees, by the acceptance and recording of this Quitclaim Deed, that he will not oppose an application to said Planning Board for the approval of such a subdivision or the application to such other official, board or agency for the approval of development plans.

The Testing Rights are, by their nature, intended to be ancillary to the approval process which would lead to the approval of the Roadway. Accordingly, the construction of the Roadway is not a condition precedent to the Grantors' right to exercise the Testing Rights. The Testing Rights may only be exercised by the Grantors in connection with said approval process.

The Grantee is hereby granted the right to use the Easement Area for all usual and customary purposes permitted by the zoning bylaws of the Town of Stow so long as such use is not inconsistent with the Easement herein reserved to the Grantors and so long as such use does not result in damage to the Roadway.

The Grantors reserve the right to convey the Easement herein reserved, to the Town of Stow in connection with the dedication and laying out of the Roadway as a public way.

The rights, easements and obligations of the Grantors and the Grantee set forth herein are intended to be appurtenant to the respective properties of each of them, and to be binding upon, and inure to the benefit of, each of them and their respective heirs, successors and assigns.

For title, reference is made to the following:

1. Deed from Iria J. Alberi, Executrix under the will of Anna J. Fors, to Jabran K. Kurker and George K. Kurker, dated September 26, 1957 and recorded with said Deeds in Book 9042, Page 582;
2. Deed from Wedad Kurker, individually and Wedad Kurker and Mitchell A. Kurker, Trustees under the will of George K. Kurker, to Jabran K. Kurker dated February 13, 1969 and recorded with said Deeds in Book 11934, Page 719;
3. The will and codicil of Jabran K. Kurker, who died on March 12, 1977 (Middlesex Probate No. 501154); and the will of Rose Kurker, who died on October 29, 1980 (Middlesex Probate No. 531421).
4. Deed from James K. Kurker et als, as Executors and Trustees of Trust A and Trust B under the will of Jabran K. Kurker to the within Grantors, of even date herewith, and to be recorded with said Deeds contemporaneously herewith.

Address of premises: 84 Great Road, Stow, Massachusetts.

EXECUTED AS A SEALED INSTRUMENT this 28 day of December, 1990.

James K. Kurker

 James K. Kurker

Corrine M. Hill

 Corrine M. Hill

George K. Kurker

 George K. Kurker

Donna H. Suffredini

 Donna H. Suffredini

CANCELLED

TAX	228.00
CASH	228.00

6028A015-33:49
CANCELLED
 EXCISE TAX

DEEDS REG 15
 MIDDLESEX
 12/31/90

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

December 28, 1990

Then personally appeared the above-named James K. Kurker and acknowledged the foregoing instrument to be his free act and deed, before me.

Jacqueline Bollen

Notary Public

My Commission Expires: 12/4/92

JACQUELINE BOLLEN
NOTARY PUBLIC
My Commission Expires Dec. 4, 1992

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

December 28, 1990

Then personally appeared the above-named George K. Kurker and acknowledged the foregoing instrument to be his free act and deed, before me.

Jacqueline Bollen

Notary Public

My Commission Expires: 12/4/92

JACQUELINE BOLLEN
NOTARY PUBLIC
My Commission Expires Dec. 4, 1992

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

December 28, 1990

Then personally appeared the above-named Corrine M. Hill and acknowledged the foregoing instrument to be her free act and deed, before me.

 Jacqueline Bollen

Notary Public

My Commission Expires: 12/4/92

JACQUELINE BOLLEN
NOTARY PUBLIC
My Commission Expires Dec. 4, 1992

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

December 28, 1990

Then personally appeared the above-named Donna H. Suffredini and acknowledged the foregoing instrument to be her free act and deed, before me.

 Jacqueline Bollen

Notary Public

My Commission Expires: 12/4/92

JACQUELINE BOLLEN
NOTARY PUBLIC
My Commission Expires Dec. 4, 1992

AFFIDAVITS

*Erkki World Inc.
4 Moosehead Industrial Pk.
PO Box 436
Greenville Jct, ME 04442*

AFFIDAVIT

To Whom this may concern,

I am submitting this Affidavit, to verify to the best of my knowledge , as both the previous Owner of the above referenced site, but also as the Owner/Operator of the primary business , ERKKINEN Buick , that was located on the site for over 40 years.

As background, I was, until the sale of the property, a proud, life long resident of the town of Stow, and for numbers of years , deeply involved in various volunteer positions within the Town , including that of Selectman.

My father purchased the site in 1936 , when two "Retail" businesses (a restaurant and gas station) were operating there. Over the years the uses expanded , eventually becoming a Buick Dealership, that included both new and used car sales, repairs, and a Body shop. In addition to our family's primary business, at various times the site accommodated numerous other tenants that encompassed other retail users, and the storage/display of vehicles and materials on the site, including a tire company, boat sales and service, day care facility, body shop, storage of buses, trucks , equipment, and many smaller storage type tenants (landscapers, contractors, etc).

In 1992 the Buick franchise was sold, but I continued to own the site, and also continued selling used vehicles under the business name of E.R. Kinnen, until the time of the sale of the property. At some point following the sale, I sold my inventory of vehicles to Mr ROBERT Brenn , who applied for and received a used car License from the Town, and continued the operation.

In 1968, the year that Zoning Bylaws were enacted in the Town of Stow, our business had the largest sales volume in our history up to that time....in line with national sales of cars, which was also the largest in history. For comparison, national sales of cars were 9,656,000 vehicles in 1968, and only 7,100,000 in 2016 !

In 1968, vehicles onsite would have consisted of approximately ;
100-120 new and used cars
20-25 employees cars
40-50 clients cars

20-30 vehicles of other tenants and their clients

180-225 Total vehicles on site

This number, and "activity level" at that time , far exceeds the current uses on the site today.

Secondly, the hours of operation of the Buick Dealership were Monday-Friday 7am-9pm, and Saturdays from 8am-5pm. Again, the hours of our operation far exceeded the hours of ALL the current users of the site today.

Lastly, it is my observation that although specific "users" of the site have certainly changed over the years, virtually all of the "uses" on the site since my ownership have continued the nature and purpose as well as the quality and character of what has existed there since the 1940's.

In short, the uses of the site (Retail, Vehicle sales and service, Storage and Display) have been consistent throughout the time of my family's ownership of the property, up to and including 2004, and in my opinion, continue to this day.

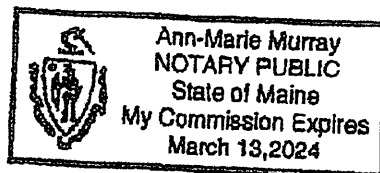
More importantly, the "intensity " of the use of the property was certainly higher during the sites operation as a dealership , than anytime since the sale of the property.

Thank you for the opportunity to contribute factual information that might help in your decision making.

Respectfully,


WAYNE ERKKINEN

Ann-Marie Murray - October 10, 2017
Notary Public



1-

AFFIDAVIT OF WAYNE E. ERKKINEN

1. I am the former President of Erkkinen Buick-Opel, Inc.
2. On or about December 29, 1983, Erkkinen Buick-Opel, Inc. signed a Lease for the premises at 92 Great Road, Stow, Massachusetts (the "Lease").
3. The company filed bankruptcy in 1991 and closed its doors on April 15, 1992, pursuant to Bankruptcy Court Order.
4. As a result, the Lease signed between the company and Wayne E. Erkkinen dated December 29, 1993 terminated on or before that date.
5. All rights of Erkkinen Buick-Opel, Inc. under the Lease have been extinguished.

Signed under the pains and penalties of perjury this 8th day of January, 1999.


Wayne E. Erkkinen

MAIL TO:
LOAN OPERATIONS
COMMERCE BANK & TRUST COMPANY
P.O. BOX 15020
WORCESTER, MA 01615-0020

HISTORY
NOTES &
E-MAILS

TOWN OF STOW PLANNING BOARD

Minutes of the June 1, 2010 Planning Board Meeting.

Present: Planning Board Members: Kathleen Willis, Leonard Golder, Steve Quinn, Ernest Dodd and Lori Clark

Associate Member: Brian Martinson
Planning Coordinator: Karen Kelleher
Administrative Assistant: Kristen Domurad

The Meeting was called to order at 7 P.M.

REVIEW OF CORRESPONDENCE AND MINUTES

Correspondence

Community Land Use Reform Partnership Act (CLURPA)

Karen Kelleher advised the Board that new proposed zoning reform legislation, CLURPA, has been released. It is a mixture of both the Land Use Partnership Act (LUPA) and the Community Preservation Act II (CPAII).

Minutes

Kathleen Willis moved to approve the minutes of the March 3, 2010 meeting, as amended. The motion was seconded by Ernie Dodd and carried by a vote of five in favor (Ernest Dodd, Steve Quinn, Kathleen Willis, Lenny Golder and Lori Clark).

Kathleen Willis moved to approve the minutes of the April 6, 2010 meeting, as amended. The motion was seconded by Ernie Dodd and carried by a vote of five in favor (Ernest Dodd, Steve Quinn, Kathleen Willis, Lenny Golder and Lori Clark).

Kathleen Willis moved to approve the minutes of the April 13, 2010 meeting, as amended. The motion was seconded by Ernie Dodd and carried by a vote of five in favor (Ernest Dodd, Steve Quinn, Kathleen Willis, Lenny Golder and Lori Clark).

Kathleen Willis moved to approve the minutes of the April 18, 2010 meeting, as amended. The motion was seconded by Ernie Dodd and carried by a vote of five in favor (Ernest Dodd, Steve Quinn, Kathleen Willis, Lenny Golder and Lori Clark).

PUBLIC INPUT

No public input

PLANNING BOARD MEMBER'S UPDATES

Pedestrian Walkway Sub-Committee

Lori Clark reported on the public forum. A few residents were opposed to a paved byway on the upper common. In response the Pedestrian Walkway Committee decided to eliminate that section of the byway from Phase I plans to keep momentum and support for the project. The

committee plans to keep the proposed byway along the town building side of Route 117 although there was one opponent who was concerned about the loss of parking spaces. The committee did not feel the loss of two parking spaces was a big enough loss to change this section of the plan because of the future addition to the Town Building parking lot. The Pedestrian Walkway Planning Committee called Sue Carter Sullivan from Places Associates to revise the proposal as such.

Ernie Dodd noted that moving the Council on Aging to Pompositticut St. School would also alleviate parking at Town Building.

Elementary School Board Committee

Steve Quinn reported that sub-bids were due earlier that day and general contractor bids are due next Monday June 14, 2010. By next week final prices will be in. He stated that the bid process is very quick because all bidders have been pre-qualified.

Lower Village Committee

Karen Kelleher reported that the Lower Village Committee plans to invite Mike Clayton, Highway Superintendent, to their next meeting to discuss permanent traffic islands. She noted that the Board might want to consider moving forward with permanent solutions after a Lower Village Master Plan is agreed upon.

COORDINATOR'S REPORT

Karen Kelleher updated the Board on the ongoing activities in the Planning Department.

Derby Woods Lot 7

Karen reported that Jim Morin and Habitech are now in contact with one another and finalizing the plans to address erosion problems. Karen said she would hear from Sue Carter Sullivan when they have completed their plans.

Brook Mill Road Subdivision

Karen told the Board a resident living in the Brook Mill Subdivision called inquiring about a possible underground tank that was possibly removed from her property during the construction of the subdivision. The plans showed the underground tank to be moved. The resident was referred to the Fire Department to confirm the removal of the underground tank.

Media

Karen told the Board Matt Gunderson from the Globe West inquired about the Collings case. She responded with, no comment, as the case is in litigation.

APPOINTMENTS

Rich Presti, 102 Great Road Violations

Mr. Presti asked the Board if they had been enforcing the bylaws fairly throughout town and Ernie Dodd assured him they are attempting to correct violations across town.

Mr. Presti asked for clarification on the zoning bylaw term, "storage."

Kathleen Willis said it is not a defined term in the zoning bylaw, but would mean anything being stored or displayed outside of a structure.

Steve Quinn said outside storage on a residential lot, could be considered a messy yard and no bylaws exist to prevent this, even if the residential use is in a business zone.

Ernie Dodd stated that the storage of unregistered cars on a residential lot would be controlled by the general bylaws which states no more than one unregistered car may be on one lot at any time. The Board reviewed the list of violations with Mr. Presti.

Item #1

- Mr. Presti said the trailer had been on the property for about twenty years. He explained that the tenant pushed the trailer back from where it originally set and was requested by the neighbor to move it back. The tenant moved the trailer back to a location that the neighbor agreed to.
- Mr. Presti cleaned the trash from behind and on his lot.

Mr. Presti said the two trailers, which were claimed to be storing scrap metal, were actually filled with the tenant's storage items. Tenant using property to store metal, and other business uses. See complaint to fire chief attached

He noted that he forwarded all complaints to the tenant about keeping the property cleaned and fixed. Mr. Presti explained that the tenant is struggling financially but promised to fix the issues as soon as possible. Mr. Presti has given them 30 days to fix the property.

- Mr. Presti claimed he could not abide by the 50ft. vegetative buffer set back requirement because the house predates the residential set back requirements of that bylaw, and the set back would extend into the living room of the next house. Tenant is using the property for storage of his business materials, tools, etc

Ernie Dodd agreed that the landscape buffer of 50ft. should not be required as his building is pre-existing.

Karen Kelleher noted that this requirement is intended for businesses not residential lots.

- Mr. Presti said he put up steel posts with orange fencing to catch trash and to keep cars from parking so close to the property line.

Item #2

Contractor's Garage

- Ernie Dodd noted that this is a business and should comply with the 50-foot buffer noted in the ZBA decision. Mr. Presti asked if they could revisit this item.

Logging Operation

- Mr. Presti said it is not a logging operation. He claimed the owner cuts trees down off site and brings some back to cut for firewood. Mr. Presti said they do not chop that frequently and has never received noise complaints.
- Ernie Dodd said it is not a permitted use in the business district.
See Page 9 where Mr. Presti admits he knew the logging company was not in compliance, which one is he lying about

Main Building/Stepping Stones parking lot

- Mr. Presti said Mrs. Perry the owner of Stepping Stones has a parent drop off plan, which has been in place for many years. Mr. Presti and Mrs. Perry have found this plan to be very effective over the past years. Mr. Presti did not feel it was his responsibility to solve the problem of through-traffic on 117.

- Kathleen offered a solution of having the highway department stripe the boundary of the road and property. Mr. Presti was in favor of this idea.
- Mr. Presti said he would remove the old business sign on the vacant space

Dave's Auto Repair

- Ernie Dodd said this business needs a sign permit and needs to comply with the bylaws by acquiring a special permit from the ZBA

School Buses on Property This is not an allowed use and was not on the property pre 1968 yet Mr. Martin Grandfathered this use in his letter dated July 13th, 2010

- Mr. Presti said he had never received a complaint about the school buses parking on the property, he only knows about the one property owner's letter. He hopes that in the future property owners would contact him directly.
- Mr. Presti said the school buses have been parking on this property for 10-30 years. He bought the property 6 years ago and claimed it was an existing use at that time. Wayne Erkkinen, the previous owner, told him school buses have been parking there since 1992.
- Ernie Dodd said the use would have to predate 1968 and be continuous, non-conforming use.

Lighting Lighting today still shines on the road and abutters properties and are not full cut off as required

- Mr. Presti said he was issued a complaint a few years ago by the building inspector Craig Martin. In response, Mr. Presti had the light adjusted so the fixture faced downward.
- Mr. Presti called Husdon Light and Power to discuss options for dealing with the other lighting issues on the property. He is waiting to hear back from them.
- Kathleen suggested he speak with the Lighting Committee
- Mr. Presti said the reason Wayne Erkkinen put the lights in was because of vandalism on the property. He also noted the light was there before neighbors homes were built.

Both back properties were built prior to 1900 ????

The Board asked Mr. Presti if they could continue their discussion after their appointment with Linear Retail, he agreed.

Linear Retail

The Board reviewed their notes from the site walk with Gordon Whitman of Linear Retail, their attorney Mark Brunell and Bill Bernard of Barlo Signs.

Gordon Whitman said they scheduled a meeting with the ZBA for a July Public Hearing and is looking for the Planning Board's input. He thanked Board members for attending the site walk.

Gordon said they would take the suggestion of moving the pylon sign back to the edge of where the current sign is located. He said the lowest edge of the sign would be 6 ft. off the ground so this would allow for complete visibility for drivers entering route 117.

Steve Quinn suggested a pylon sign where the east proposed pylon sign would sit. Instead of a 6ft. gap on the bottom, he proposed they put the other business names (businesses on the proposed west pylon sign) on the bottom. He noted that since the sign will be moved back, cars will not need the 6ft. visibility underneath. Steve said this would eliminate the need for two large pylon signs, and also suggested keeping the smaller Shaw's sign on the west end of the Plaza.

Lori Clark asked why the owners felt they needed to double the size of the current size.

Gordon Whitman referred the Board to Bill Bernard, Linear's sign engineer's visibility chart describing the key elements and size of a functional sign.

Gordon argued that the reason for the need to increase in size is for business survival. He stressed Linear's concern of the Price Chopper and Market Basket coming into neighboring towns. He said they need to create a destination center where people will shop, and they desperately need to keep their anchor store.

Lori Clark said that Shaw's prices are extremely high compared to the current competitors. She also noted that other competitive factors would determine their stability, not the size of the sign.

Gordon Whitman explained that they offered Shaw's a space on both pylon signs in exchange for adding some of the other store names on the west pylon.

Kathleen Willis commented on shopping plazas in neighboring towns that only have a plaza name sign near the road and utilize the signs on the storefronts identify themselves to customers. She asked if they had any statistics on these shopping centers viability.

Gordon Whitman said he knew the plazas she was referring to but would not be willing to take that risk. He told the Board if Shaw's sales drop below 10-20% they will move out, leaving the plaza anchorless.

Lori Clark stated that the current sign is not attractive and is clearly falling apart, for these reasons it is not effective, not necessarily the size.

Lori had hoped Linear Retail would have come to the Board with a sign design that was around the same size as the current non-conforming sign but with a more effective design.

Gordon Whitman said they hired a sign expert to create effective signs; they came up with two pylon signs with average letter sizes of 7-10 inch.

Gordon Whitman said they would ask Citizen's Bank to remove their sign and potentially add them to the pylon sign.

Lori Clark noted Citizen's Bank has signs on their building, which has full visibility from Route 117.

Gordon Whitman asked for the Board's consensus on Steve's suggestions.

Most Board members felt more comfortable with this idea than the two large pylon signs.

Steve Quinn also noted that most businesses have 7-inch letters on 20-inch blocks and wondered if they could make the blocks smaller to take up less space.

Gordon explained that some businesses rent larger spaces and expect a larger sign space on the pylon.

Mark Burrell noted the bylaw states that freestanding signs need to be visible according to the bylaw section 6.3.3.2.

"One (1) primary free standing SIGN visible from the main public way not exceeding twenty (20) square feet in area."

Gordon Whitman said the site has a lot of challenges already including the far set back design and large parking area in the front.

Steve Quinn encouraged public comments.

Resident Russ Willis of 45 Walcott St. said that Stow is a rural town and the proposed signage does not need to be the same size as those who compete in large commercial strips, because it is the only large plaza in town. He stated that the current sign is not in compliance, but he would accept a renovated sign in that size. He said the two signs proposed are outrageous.

Resident Ross Perry of 4 Circuit Drive explained that the spirit of the bylaw was to keep signs small and consistent with the rural feel of the town. He cautioned that the town should draw a line on size limit because if a new plaza came into town, they will want to compete with the existing plaza by having an even larger sign. He also suggested size of the signs on the pylon should be related to the amount of frontage each store has in the building, as opposed to the area of sq ft.

Resident Brian Martinson of 43 Pompositicut St. agreed with the other residents' comments. He said the proposed pylon signs are outrageously large and that the existing sign does not comply. He stressed that the two proposed pylon signs are not in keeping with the visual aesthetics of the Lower Village.

Lori Clark noted that when they first wrote the special permit, indicating Linear Retail was to consult with the Planning Board prior to applying for a variance from the ZBA, the Planning Board knew the size would be larger than what the bylaw allows but never two larger pylons that were 62% wider and 52% higher.

Kathleen Willis reminded Linear Retail that The Board had asked them for over two years to submit sign ideas. She said the Board negotiated the amount of trees and landscaping in the original decision because Linear argued that they did not want anything obstructing the signs on the building.

Lori Clark asked if the pylon would be taller than the power lines.
Gordon Whitman said the sign would be moved back and would not affect the power lines.

Gordon Whitman said he heard the Board's concern about aesthetics, but argued that the Town couldn't have it both ways. They need an environment where businesses can succeed but cannot do so without the opportunity to be seen.

Brian Martinson suggested that they could have it both ways and believed they could come to a compromise.

Lenny Golder suggested adding landscaping around the signs to soften the image. Gordon Whitman said they would be open to this idea.

Lenny also suggested having several smaller signs along the frontage. Other members of the Board were not in favor of this idea.

Steve Quinn told Linear that they would have a difficult time getting support from the Planning Board with the current design.

Mark Burrell said that Linear Retail would need to optimize every option they have, including the sight line to signs on the building.

Mark said that reducing the size to 4-5 inches would be pointless. He stated that 10 inches is optimal and 7 inches is the absolute minimal according to the sheet shown by the sign designers. Mark noted that traffic in the Lower Village has gotten slower so drivers could see some building signs but would not turn their heads to see the east side shops.

Ernie Dodd said that most people living in Stow know where Shaw's is located.

Mark Burrell argued that the site needs a sign to capture drivers who don't live in Stow.

Gordon Whitman said that 50% of the shoppers at Shaw's come from outside of Stow.

Steve Quinn asked each Board member to give any last comments.

Steve thought the proposed pylon sign should be smaller. He suggested Linear Retail make the signs as small as they can but with visibility through creative design. He noted that the current proposal would be a tough sell with the Town.

Ernie Dodd suggested using standard letters for all signs and that 16ft wide pylon is too large for Stow.

Lenny Golder agreed the sign needed creativity and suggested including shrubbery. Lenny said the current sign is too small and may need to be increased in size but not to the extent of the current proposal.

Associate Member Bruce Fletcher said signage is needed on the street because they are crucial for drivers not familiar with the area. He agreed the size was much too big, and did not support having more than two signs. He suggested making the two pylon signs smaller. He noted this is a unique property and that no other area in town has a plaza this large, and therefore is not concerned about precedent.

Kathleen Willis requested Linear Retail come back to the Planning Board to discuss outstanding issues in their special permit and issues about lighting. She told Gordon, Linear would need a photometric lighting plan to know how many lumens could be used for the new pylon sign.

Steve Quinn asked Gordon if their engineer could compare the amount of lumens in the current sign to the proposed sign, instead of a study on the entire site.

Gordon Whitman explained that it is a very expensive process to have a lighting engineer complete this type of work.

Kathleen Willis said the proposed sign does not meet the criteria for full cut-off and suggested finding alternative fixtures for the sign.

Karen Kelleher offered to send the link "starrynightlights.com" website for alternative full-cut off fixtures.

Gordon Whitman said they would look into other fixtures.

Ernie Dodd and Steve Quinn agreed that a lumen output study did not seem necessary.

Gordon Whitman said the parking lot lights have an option so they can be dimmed and he will check to see if this condition is being met.

Gordon said he was willing to consider the Board's comments.

Linear Retail will be scheduled to meet with the Planning Board to review amendments to their proposal on June 15th at 8:30 PM.

Steve Quinn asked Gordon if he was interested in meeting with the Lighting Committee. Gordon said they would review the alternative fixtures from the web link first.

Kathleen Willis said she is trying to determine compliance with the landscaping plan and would like to meet with Roger Sturgis in person to discuss the landscaping.

Gordon will put Kathleen Willis in contact with Roger Sturgis.

Rich Presti, 102 Great Road Violations, continued.

General Site Conditions

Monitoring Wells

- Mr. Presti said he has been working with the Town to implement a water system for Lower Village and has signed agreements with the Department of Environmental Protection. He said his site is monitored once a month and will be until, and if a water system is put in the Lower Village.
- He also noted that Stepping Stones uses bottled water even though the tests have passed every time. Monitoring stopped when Steppingstones School vacated the property and Mr. Presti lost his Public Water Supply grandfathering

Kathleen Willis noted that reports have never been given to the Board.

Grease Traps

- Mr. Presti explained that the requirement for grease traps is outdated and grease traps are now outlawed. He said all grease traps on the site were pulled out and filled with concrete.

Special Permit Requirements

- Mr. Presti said special permits from 1988 and 2001 have a number of conditions attached to them. He stated it was his understanding that special permits have a life span of two years and if no building had commenced within those years it is expired along with the attached conditions.
- Mr. Presti stated that several items listed in this letter are actually voided because the special permit was never acted upon.

- Mr. Presti asked the Board to review the ZBA decisions and to explain if the site is pre-existing non-conforming site and therefore exempt from outside storage.

Paving Parking Area

- Mr. Presti said he cannot afford to pave the whole area, and if he did he would then face difficulty with the Conservation Commission.
- He noted that businesses, churches and town owned land have parked cars on dirt lots
- He asked for fairness and warned the Board that enforcing in this manner they will put people out of business. *Its now 2022 and no additional paving has been completed.*

Mr. Presti explained that he knew the logging company was not in compliance with the bylaw but his alternative was to keep the lease with an existing body shop that could compromise the site's ground water, ruining the site for future development. *Noted on Page 3 regarding logging company*

Mr. Presti said he wants to develop the site but is restricted by water limitations. Mr. Presti said he has plans to develop the site in a way that would make Stow residents happy, but currently being restricted by water makes it difficult to financially keep the property without having issues strictly complying with the bylaw.

He told the Board a franchise car dealership had come to him with interest to do business on the property but he does not want develop the lot in this way.

Mr. Presti said there are several items on the non-compliance list that he was not aware of and would need time to address them and report back. He said there are several items he is willing to address but would need relief from others.

Mr. Presti said if the Board hard lines him, it would make it very difficult to do what is right for that property in Lower Village. He said he couldn't financially conform to all the items listed and if he is required, he would most likely have to sell the property. *I agree with Mr. Presti that it is overdue for him to sell the property*

He requested time to address some of the issues and for the Board to review the questions he raised.

Ernie Dodd said they would review the questions raised but wanted to point out that grandfathering only applies if there has not been a two-year lapse in the use. Ernie Dodd noted that a lot of things could be corrected by obtaining special permits, which would clear up a lot of the non-conforming issues.

Steve Quinn said he would like to discuss this as a Board and suggested meeting together with Mr. Presti at a later date.

The Board decided to discuss the issues raised by Mr. Presti at the July 6th meeting and to make an appointment for Mr. Presti on the July 20th meeting.

Ernie Dodd thanked Mr. Presti for his efforts toward getting water to Lower Village.

DISCUSSION/ACTION ITEMS

Voting Associate Member

Board members reviewed Bruce Fletcher and Brian Martinson's applications.

Brian Martinson said he has lived in Stow for over 20 years. He noted the level of experience Bruce has to offer and noted that Bruce will most likely be willing to give advice when needed. Brian got involved in town activities, mainly for personal reasons but then became interested in Planning Board soon after. He said he does a lot of background research into projects and believes he plays a good devils advocate. He noted that he makes decisions on accurate information and thinks he could provide an analytical edge.

Lenny Golder asked Brian how flexible he would be in regards to special permits, in terms of giving a business the opportunity to correct something.

Brian said his style is very situational. He believes he can be flexible and said he has demonstrated that. Brian said he is pro business but thinks it needs to operate within the society they live in and. There are approaches for improvement and feasibility within the confines of the Law. There maybe room for interpretation.

Brian said he has been an advocate for clarifying the bylaw for of "open" signs.

Steve Quinn asked Brian what he sees as a Planning Board priority for the next year.

Brian stated, whether laws are enforced or not there has to be some clarity between the Zoning Enforcement Officer and the Board of Selectmen. People need to know their job. Brian also said monitoring the implementation of the Center School Plan should also be a priority.

The Board acknowledged Bruce Fletcher's qualifications and knowledge of the Town and it's Bylaws. They noted his invaluable experience but felt he was unable to commit to attend regularly scheduled meetings.

The Board believed Brian Martinson had a lot to could bring to the position, including knowledge of environmental sciences.

Ernie Dodd moved to appoint Brian Martinson as the Voting Associate Member of the Planning Board. The motion was seconded by Lenny Golder and carried a vote of four in favor (Ernie Dodd, Lenny Golder, Kathleen Willis, Lori Clark) and one against (Steve Quinn).

MAGIC appointment

Kathleen Willis moved to appoint Donna Jacobs as the Planning Board MAGIC representative. The motion was seconded by Ernie Dodd and carried a vote of five in favor (Kathleen Willis, Ernie Dodd, Lenny Golder, Steve Quinn, Lori Clark).

Blacksmith Shop

The Planning Board determined that committing to moving the blacksmith shop before July 30th was beyond their Board's charge.

Ridgewood AAN

Karen Kelleher reported that she spoke with Bill Roop and expressed the Planning Board's concern about selling off lots in the subdivision. He told her he also shares that concern and would like to talk with the Board on how they plan to control sold lots.

Steve Quinn said this could be helpful when dealing with future developments.

Karen told the Board Bill Roop also sent in deed riders, one similar to that of Arbor Glenn but the Affordability Deed was an old form. Karen sent him a copy of the correct form.

DerbyWood Phase II

Karen told the Board that abutters have requested removal of the existing turnaround. Mike Clayton, Mark White and Sue Carter Sullivan, Planning Board's consulting engineer, agreed.

Ernie Dodd requested they have a chance to review this site before making a decision. Steve Quinn suggested each Planning Board member drive by the site before the meeting next week.

Karen reported that Sue Carter Sullivan said it would make the project easier because of issues locating underground utilities.

Lighting

Karen told the Board the Lighting Committee would be submitting their recommendation to the Board of Selectmen with a recommendation on a light at Town Hall.

Lenny Golder said he drove past Stow House of Pizza and the lights were off. Steve Quinn said the problem with some of the current lighting owned by Hudson Light and Power in the Lower Village is photocell style and not time clocks.

Lenny mentioned other town lights that are not full cut off. Ernie Dodd said it might be worth the Town's money to change some of the fixtures so the Town could set the example.

Golf Course Monitoring Wells

Karen told the Board she had not received the water monitoring reports.
Karen offered to send a formal memo checking on the status of the reports.

Planning Board Annual Dinner

The Board will look into dining options at Wildwood, Gibbet Hill, Wayside Inn and River rock.

Looking Ahead

Steve Quinn suggested the Board discuss their 2010-2011 priorities at next weeks meeting.

The meeting was adjourned at 10:45 PM

Respectfully submitted,
Kristen Domurad
Administrative Assistant

X-10
T.S.B.
E → 3

Karen Kelleher

From: Stuart Beckley [stuartb@easthampton.org]
Sent: Monday, March 22, 2010 11:45 AM
To: 'Karen Kelleher'
Subject: RE: [Massplanners] Class II Used Car Sales License

RECEIVED

23
MAR 23 2010

TOWN OF STOW
PLANNING BOARD

Easthampton :

1. Zoning Enforcement officer
2. In most cases. They have started checking in the past couple of years.

-----Original Message-----

From: massplanners-bounces@cs.umb.edu
[mailto:massplanners-bounces@cs.umb.edu] On Behalf Of Karen Kelleher
Sent: Monday, March 22, 2010 11:28 AM
To: Mass Planners List Serve
Subject: [Massplanners] Class II Used Car Sales License

A few questions about Class II Used Car Sales Licenses. Used car lots are only allowed in the commercial district in Stow. However many of the licenses are issued to businesses located in the Residential District. We also have a site, located in the Business District, that had grandfather protection for a used car lot, however the use was discontinued at least three years ago. Although the use is discontinued, the Board of Selectmen has renewed the license on an annual basis.

1 - Does your Licensing Authority seek input from the Planning Board or Zoning Enforcement Officer before issuing a Class II license?

2 - Is the License tied to Zoning?

Thanks,

Karen Kelleher
Planning Coordinator
Town of Stow
380 Great Road
Stow, MA 01775
978-897-5098
978-897-2321 (Fax)
www.stow-ma.gov

THIS LETTER IS IN
THE PLANNING BOARD'S
FILE FOR MR. PRESTI'S
PROPERTY

MassPlanners mailing list
MassPlanners@cs.umb.edu
<http://mailman.cs.umb.edu/mailman/listinfo/massplanners>

Karen Kelleher

From: Brian Martinson [bmartinson@earthlink.net]
Sent: Tuesday, March 23, 2010 10:29 PM
To: Karen Kelleher
Subject: Presti Property - Zoning Bylaw Compliance Issues



LV Bylaw Compliance Memo

Dear Planning Board:

My understanding is that the "Presti Property" constitutes two parcels (#s 83 and 85A) in the Lower Village (LV). There appear to be many "Zoning Bylaw" nonconformances on-site. In reviewing my past notes about the property, and during a brief drive-over this weekend, I've compiled the below list of fourteen (14) non-compliance issues. This is not a comprehensive list, but does represent some of the more obvious and significant non-compliance issues associated with the property. I have not done a walk-over of "Parcel 85A" (the rear parcel), primarily due to concerns about trespassing on what is clearly not publicly accessible property. I have, however, made certain visual observations from a distance.

Lighting Issues:

1. There are three tall parking lot floodlights on after business hours (basically, all night long). These lights are unshielded and two shine onto the roadway (Route 117) and into the eyes of passing drivers at night. The other provides excessive illumination of the entire empty parking lot.

Sign Issues:

2. "Apexx Automotive" sign advertises a business that has not been active in many years. I believe the Zoning Bylaw requires that it be removed by the property owner.

3. "Dave's Auto Repair" sign (no evidence of a sign permit). Suspect this is a non-permitted sign, and is also an unlicensed business. Probably requires a Special Permit.

4. Steppingstone's sign (no evidence of a sign permit)- is also located in the town "right-of-way" and may also be a potential vehicular hazard.

5. There is a large "Rental Space" banner hanging on the main building. This sign exceeds allowed dimensions and does not appear to have a sign permit.

6. There are a variety of other smaller signs on the property that may, or may not, be in conformance with the Zoning Bylaw.

Town "Right-of-Way" Issues:

7. A large portion of the property in front of Steppingstones has been entirely paved over. It also represents a pedestrian/vehicle safety hazard (Eastbound traffic often uses as a passing lane).

8. A large industrial-sized truck (a log hauling truck with crane) is currently parked on the town right of way with a "for sale" sign attached. It should be moved off town property. In addition, The outdoor display and sale of large industrial trucks, I suspect, has never been an allowed use on this particular parcel. Although at one time there was new/used car sales activity on the property, this particular truck is something else altogether.

9. See above Steppingstones sign issue. Although I do not believe there is a strict prohibition on signs in the "right-of-way," this is a potential Zoning Bylaw clarification that the PB may want to consider.

Nonconforming "Business District" Issues:

10. No formal "used car" business has existed on the parcel for at least three and 1/2

years. Although the BOS has granted a business license to sell used cars on the property for the past several years, there has been no "bona fide" sales activity since Apexx ceased operation. On occasion, there has been a single used car offered for sale with a sign and phone number (e.g., a cherry-red pickup truck that sat there for about one and 1/2 years). I suspect the owner of the property is hoping to build a case for "grandfathering" a used car operation on the parcel. However, I doubt (a) obtaining a license from the BOS and (b) arranging to have a single "vehicle for sale" parked on the town "right-of-way" constitutes a strong case for "grandfathering" as per the town's Zoning Bylaw. It seems like the property owner should seek a Special Permit from the Planning Board.

11. "Dave's Auto Repair" has recently started to advertise its service on the property. Although at one time there was a variety of auto repair activities on the property, it has been at least 5 years since this occurred (the last related business I believe was a tire sales and repair operation). I suspect this business probably needs a Special Permit. In addition, I doubt if this operation has a business license.

12. There appears to be a large "Contractors Yard" directly behind the Steppingstone's Building. I have not investigated this closely since this activity abuts and is likely associated with those residing in the rental properties on the parcel.

13. There appears to be a large "Log Cutting Operation" to the rear of the property. I suspect it's been there approximately two and 1/2 years. It is an entirely "open air" operation on approximately 1/4 acre of land. Large logs are hauled to the property and stored, and periodically sawed and/or split in to firewood. During the winter the property is strewn with huge amounts of split firewood. I suspect this activity is not allowed in the business district and/or at least requires a Special Permit. I'm not certain, but I suspect they do not have a business license.

14. For the past several years there has been a large "School Bus Parking and Storage" operation on the property. Buses are parked there from late afternoon to early morning. I believe this activity is not allowed in the business district, or at least would require a Special Permit.

I suspect there are many other Zoning Bylaw nonconformities on the "Presti Property." I'd be happy to conduct a more formal and comprehensive compliance audit of the property if the Planning Board believes this would be valuable. Let me know if you have any questions.

Best Regards,
Brian

P.S. FYI, I'm also attaching an older memo about Zoning Bylaw compliance in the LV (dated 5/26/08). Some of it contains compliance concerns about the Presti property (pages 5 and 6).

*



Town of Stow
PLANNING BOARD

380 Great Road
Stow, Massachusetts 01775
(978) 897-5098
FAX (978) 897-2321

May 5, 2010

Mr. Richard Presti
585 Massachusetts Avenue
Acton, MA 01720

Re: 92 and 102 Great Road, Stow

Dear Mr. Presti,

This letter is meant to follow up on Planning Board site meetings to your property at 92 and 102 Great Road, Stow. Thank you for meeting with us and providing the opportunity to view the property.

As you are aware, the Planning Board has received several inquiries and complaints about the condition of your site and whether all of the uses comply with the Zoning Bylaws and/or Special Permit Decisions.

The Planning Board would appreciate your attendance at its meeting of May 18, 2010 to discuss our observations, listed below. We look forward to meeting with you and hope to come up with a plan that will result in improvements to your property and business and Stow's Lower Village as a whole.

1. Residential Use/Outside Storage

Although the property is located in the Business District, the Planning Board acknowledges that single-family residence is a grandfathered use. However, as discussed during one of the site walks, an abutter (15 Heritage Lane) complained of litter, trash, car parts, slag pile, etc. located on their property. It has since been reported that this has been cleaned up, and we thank you.

As you are aware the Board also noted a number of trailers located on the property. A 30-foot trailer is partially located on property at 15 Heritage Lane and smaller trailers are backed up the property line. It appears that these trailers and associated materials on the property may be associated with the tenants business. If this is the case, this use is not allowed in the Business District and the Board is unaware of a Special Permit, granted by the Zoning Board of Appeals, for this particular use. It should also be noted that outside storage is not allowed in the Business District (Section 3.3.2 of the Zoning Bylaw). In addition, because the property abuts the Residential District, the required rear and side yard setback is 50' and a 50' landscaped buffer that consists of an opaque screen is required (Section 4.4 of the Zoning Bylaw).

Section 7.7.7 of the Zoning Bylaw requires that the height and shielding of lighting standards for off-street parking and loading areas used after sunset shall provide proper lighting without hazard to drivers or nuisance to residents and the design of lighting standards shall be of a type appropriate to the development and Stow and otherwise compliance with Section 3.8.1.5 of this Bylaw.

In its Decision dated February 2, 1976, the Zoning Board of Appeals granted a Special Permit to replace a sign on the façade of the building located at 92 Great Road. The decision included the following conditions relative to sign illumination:

- The sign shall not be directly illuminated and will not have any oscillating, flashing or moving parts.
- All indirect illumination, other than security lights for protection of property, will be turned off at the time the sales area is closed for the day.

In its Decision dated June 27, 1988, the Zoning Board of Appeals granted a Special Permit to allow construction of a two-story automobile salesroom and office; the construction of an attached garage; and associated parking areas. The decision included the following conditions relative to sign illumination:

- Present and future lighting is to be so configured that no direct light shall fall outside of the property lines.

8. General Site Conditions/Requirements

In its Decision dated June 27, 1988, the Zoning Board of Appeals granted a Special Permit to allow construction of a two-story automobile salesroom and office; the construction of an attached garage; and associated parking areas. The decision included the following conditions:

- Monitoring wells to check ground water contamination are to be installed in positions acceptable to the Board of Health, and monitoring is to be carried out to their satisfaction.

Please confirm the existing of the required monitoring wells.

- There shall be a fifty (50) foot radius circular buffer zone within Lot B with its center located on the southeast corner of the property within which no parking or loading areas may be located.

Existing site conditions do not comply with this condition.

- The fifteen (15) foot landscaped buffer area on Great Road shall be constructed in accordance with Section VI-C-2-4. This will necessitate the relocation of the parking area.

A fifteen (15) foot landscape buffer area between Great Road does not exist.

- The drainage plan including the use of grease traps on both floor and storm drains must be detailed on the revised site plan and approved by the Zoning Board of Appeals in consultation with both the Planning Board and Board of Health.

Please confirm compliance with a drainage plan, including the use of grease traps.

c. Vacant Space

The vacant space has signage from a previous tenant, which should be removed (Section 6.3.1.4 of the Zoning Bylaw). Any new businesses for this space must comply with section 3.3 of the Zoning Bylaw.

5. School Bus Storage

The Planning Board received complaints and observed school busses stored on the site. School buses are being stored on the property. This use is not allowed in the Business District and the Board is unaware of issuance of a Special Permit for this particular use. As noted above, outside storage is not allowed in the Business District (Section 3.3.2 of the Zoning Bylaw). In addition, the Board is concerned that the buses are parked on an unpaved surface with no protection for spillage of any hazardous liquids from the buses.

In its Decision dated June 27, 1988, the Zoning Board of Appeals granted a Special Permit to allow construction of a two-story automobile salesroom and office; the construction of an attached garage; and associated parking areas. The decision included the following condition:

- There shall be paving and suitable drainage under any area where cars will be stored or parked, even for a brief time.

6. Used Car Lot

The Planning Board questions whether the used car lot is a grandfathered use, however the Board of Selectmen issued a Class II License for four (4) cars. The Planning Board received complaints and observed vehicles (cars and a truck) parked within the Town's right-of-way, in violation of Article 6, Sections 9 and 23 of the General Bylaw. It has since been reported that the vehicles have been removed, and we thank you.

In its Decision dated June 27, 1988, the Zoning Board of Appeals granted a Special Permit to allow construction of a two-story automobile salesroom and office; the construction of an attached garage; and associated parking areas. The decision included the following condition:

- There shall be paving and suitable drainage under any area where cars will be stored or parked, even for a brief time.

Any signage for this business must comply with Section 6.3 of the Zoning Bylaw, and a permit is required.

The APEX used car sign is from a previous tenant and should be removed (Section 6.3.1.4 of the Zoning Bylaw).

7. Lighting

Exterior lighting for the entire property does not comply with Section 3.8.1.5 of the bylaw which states: "Exterior lighting – No exterior lighting, or other street lighting approved by the SELECTMEN, shall shine on adjacent properties or towards any STREET in such a manner as to create a nuisance or hazard."

Some of the lighting is shining onto adjacent properties. Since business is not conducted on the property after sunset, except for a short winter period. The Planning Board questions the number of lights present and their lumen output. With the exception of low lumen security lights, all other lights should be turned off after the business activity is concluded each day.

2. Contractor's Garage

The Board also noted the use of two-story garage being used as a contractor's garage. This use is not allowed in the Business District and the Board is unaware of a Special Permit, granted by the Zoning Board of Appeals, for this particular use.

Some of the automobiles associated with this use are stored and/or parked on the southern property line and some are located on town property.

As noted in item 1 above, outside storage is not allowed in the Business District (Section 3.3.2 of the Zoning Bylaw). Because the property abuts the Recreation-Conservation District, the required rear and side yard setback is 50' and a 50' landscaped buffer that consists of an opaque screen is required (Section 4.4 of the Zoning Bylaw).

3. Logging Operation

The Board received complaints and observed a logging operation on the site.

This use is not a permitted use in the Business District and the Board is unaware of a Special Permit, granted by the Zoning Board of Appeals, for this particular use.

4. Main Building fronting Route 117

The Board observed that the main building provides space for three businesses: Steppingstones School, Dave's Auto Repair and a third vacant space. This building presently provides structure for housing three businesses.

a. Steppingstones School

Steppingstones School is a permitted use in the Business District (Section 3.3 of the Zoning Bylaw). The Planning Board, on June 15, 1993, received and approved an application for a Site Plan for this use. It was noted that at least 50% of the paved area in front of the building is the Town's right-of way. The Planning Board is concerned that the parking, drop off and pick up area in the front of this building is unsafe given the fact that the sight is located at a congested intersection with vehicles using the paved area to pass cars turning left onto Pompositticut Street.

Although not included in the approved Site Plan, the Planning Board recommends that the parking situation along the front of the building be reviewed and request that you provide a plan to improve the existing conditions for the Planning Board to review.

b. Dave's Auto Repair

Dave's Auto Repair is a permitted use in the Business District, however a Special Permit, granted by the Zoning Board of Appeals, is required (Section 3.3.3 of the Zoning Bylaw). The Board also noted storage of automobiles associated with this use, which should be addressed by a Special Permit Decision. The Planning Board is unaware of a Special Permit being granted for this use. The Board also notes that the signage for this business does not comply with Section 6.3 of the Zoning Bylaw. A sign permit is required.

In its decision, dated October 28, 1997, the Zoning Board of Appeals granted a Special Permit to allow a change in use from an automotive service business to a dry cleaning store. In this decision, the Zoning Board of Appeals found that the current automotive use of a large portion of the non-conforming part of the existing building will be vacating the premises.

- There shall be paving and suitable drainage under any area where cars will be stored or parked, even for a brief time, and this area is to be shown clearly on revised site plans.

Existing site conditions do not comply with this condition. The Planning Board observed vehicles parked on unpaved surfaces throughout the property.

We look forward to meeting with you on Tuesday, May 18, 2010 at 7:30 p.m.

Sincerely,

Karen Kelleher
Planning Coordinator

cc: Craig Martin, Building Commissioner

Mr. Presti received this letter and others showing the property was out of compliance so he met up with Mr. Martin and convinced him that all was grandfathered in without Mr. Martin doing the due diligence needed.



Town of Stow
PLANNING BOARD

380 Great Road
Stow, Massachusetts 01775
(978) 897-5098
FAX (978) 897-2321

August 3, 2010

Mr. Richard Presti
585 Massachusetts Avenue
Acton, MA 01720

Re: 92 and 102 Great Road, Stow

Dear Mr. Presti,

This letter is meant to follow up on your meeting of June 1, 2010 with the Planning Board. Thank you for meeting with us and for the July 22, 2010 status report. The following outlines the Board's understanding of the status (noted in **bold**) of the issues raised in its letter dated May 5, 2010.

1. Residential Use/Outside Storage

Although the property is located in the Business District, the Planning Board acknowledges that single-family residence is a grandfathered use. However, as discussed during one of the site walks, an abutter (15 Heritage Lane) complained of litter, trash, car parts, slag pile, etc. located on their property. **It has since been reported that this area has been cleaned up.** This was an ongoing issue with Marie Guiles

As you are aware the Board also noted a number of trailers located on the property. A 30-foot trailer is partially located on property at 15 Heritage Lane and smaller trailers are backed up the property line. It appears that these trailers and associated materials on the property may be associated with the tenants business. If this is the case, this use is not allowed in the Business District and the Board is unaware of a Special Permit, granted by the Zoning Board of Appeals, for this particular use. It should also be noted that outside storage is not allowed in the Business District (Section 3.3.2 of the Zoning Bylaw). In addition, because the property abuts the Residential District, the required rear and side yard setback is 50' and a 50' landscaped buffer that consists of an opaque screen is required (Section 4.4 of the Zoning Bylaw). **As indicated in your letter dated July 22, 2010, all trailers have been removed. As you indicated at the June 1, 2010 Planning Board meeting, it is the Planning Board's understanding that the residential home on the property is a grandfathered residential use in the Business District, and the tenant is not operating a business. In addition, the Board understands that the 50' landscaped buffer, as required by Section 4.4 of the Zoning Bylaw does not apply, as the grandfathered residential dwelling is located within the 50' setback.**

2. Contractor's Garage

The Board also noted the use of two-story garage being used as a contractor's garage. This use is not allowed in the Business District and the Board is unaware of a Special Permit, granted by the Zoning Board of Appeals, for this particular use.

Some of the automobiles associated with this use are stored and/or parked on the southern property line and some are located on town property.

As noted in item 1 above, outside storage is not allowed in the Business District (Section 3.3.2 of the Zoning Bylaw). Because the property abuts the Recreation-Conservation District, the required rear and side yard setback is 50' and a 50' landscaped buffer that consists of an opaque screen is required (Section 4.4 of the Zoning Bylaw).

It has since be reported that the automobiles parked on town property have been removed. With regards to the two-story garage being used as a contractor's garage - The Zoning Enforcement Officer conducted a site visit on July 8, 2010 and determined that all of the current uses at this property are the same or consistent with the past uses of the site recognized as grandfathered uses by the Zoning Board of Appeals. Therefore a Special Permit is not required,

This is 84 Great Road and is not Grandfathered as it was purchased in 1990

3. Logging Operation

The Board received complaints and observed a logging operation on the site.

This use is not a permitted use in the Business District and the Board is unaware of a Special Permit, granted by the Zoning Board of Appeals, for this particular use.

The Zoning Enforcement Officer conducted a site visit on July 8, 2010 and determined that all of the current uses at this property are the same or consistent with the past uses of the site recognized as grandfathered uses by the Zoning Board of Appeals. Therefore a Special Permit is not required.

This is 84 Great Road and is not Grandfathered as it was purchased in 1990

4. Main Building fronting Route 117

The Board observed that the main building provides space for three businesses: Steppingstones School, Dave's Auto Repair and a third vacant space. This building presently provides structure for housing three businesses.

a. Steppingstones School

Steppingstones School is a permitted use in the Business District (Section 3.3 of the Zoning Bylaw).

The Planning Board, on June 15, 1993, received and approved an application for a Site Plan for this use. It was noted that at least 50% of the paved area in front of the building is the Town's right-of-way. The Planning Board is concerned that the parking, drop off and pick up area in the front of this building is unsafe given the fact that the sight is located at a congested intersection with vehicles using the paved area to pass cars turning left onto Pompositticut Street.

Although not included in the approved Site Plan, the Planning Board recommends that the parking situation along the front of the building be reviewed and request that you provide a plan to improve the existing conditions for the Planning Board to review.

As you indicated at the June 1, 2010 Planning Board Meeting, it is our understanding that the owner of Stepping Stones has a parent drop off plan, which has been in place for many years. The Planning Board will discuss the existing conditions relative to through-traffic on Route 117 with the Highway Department.

b. Dave's Auto Repair

Dave's Auto Repair is a permitted use in the Business District, however a Special Permit, granted by the Zoning Board of Appeals, is required (Section 3.3.3 of the Zoning Bylaw). The Board also noted storage of automobiles associated with this use, which should be addressed by a Special Permit Decision. The Planning Board is unaware of a Special Permit being granted for this use. The Board also notes that the signage for this business does not comply with Section 6.3 of the Zoning Bylaw. A sign permit is required.

The Zoning Enforcement Officer conducted a site visit on July 8, 2010 and determined that all of the current uses at this property are the same or consistent with the past uses of the site recognized as grandfathered uses by the Zoning Board of Appeals. Therefore a Special Permit is not required.

As indicated in your letter of July 22, 2010, we understand that you notified your tenant that the sign shall be removed.

Auto repair shops unless affiliated to a car dealership are not allowed in a business district without a special permit. During the Erkinen ownership the repair shops were part of the dealership. When Erkinen went out of business in 1992 he lost the grandfathering and any new repair shops needed a Special Permit to Open.

In its decision, dated October 28, 1997, the Zoning Board of Appeals granted a Special Permit to allow a change in use from an automotive service business to a dry cleaning store. In this decision, the Zoning Board of Appeals found that the current automotive use of a large portion of the non-conforming part of the existing building will be vacating the premises.

As indicated in your letter of July 22, 2010, the special permit decision to allow a change in use from an automotive service business to a dry cleaning store was never acted upon, and therefore the Special Permit (and associated conditions) is null and void. Town Counsel also confirmed the fact that, if a Special Permit is not acted upon, the permit is considered null and void.

c. Vacant Space

The vacant space has signage from a previous tenant, which should be removed (Section 6.3.1.4 of the Zoning Bylaw). Any new businesses for this space must comply with section 3.3 of the Zoning Bylaw.

It is the Board's understanding that this sign has been removed.

5. School Bus Storage

The Planning Board received complaints and observed school busses stored on the site. School buses are being stored on the property. This use is not allowed in the Business District and the Board is unaware of issuance of a Special Permit for this particular use. As noted above, outside storage is not allowed in the Business District (Section 3.3.2 of the Zoning Bylaw). In addition, the Board is concerned that the buses are parked on an unpaved surface with no protection for spillage of any hazardous liquids from the buses.

The Zoning Enforcement Officer conducted a site visit on July 8, 2010 and determined that all of the current uses at this property are the same or consistent with the past uses of the site recognized as grandfathered uses by the Zoning Board of Appeals. Therefore a Special Permit is not required. This is 84 Great Road is not Grandfathered as it was purchased in 1990

In its Decision dated June 27, 1988, the Zoning Board of Appeals granted a Special Permit to allow construction of a two-story automobile salesroom and office; the construction of an attached garage; and associated parking areas. The decision included the following condition:

- There shall be paving and suitable drainage under any area where cars will be stored or parked, even for a brief time.

As indicated in your letter of July 22, 2010, the special permit decision to allow construction of a two-story automobile salesroom and office was never acted upon, and therefore the Special Permit (and associated conditions) is null and void. Town Counsel also confirmed the fact that, if a Special Permit is not acted upon, the permit is considered null and void.

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The Planning Board questions whether the used car lot is a grandfathered use, however the Board of Selectmen issued a Class II License for four (4) cars. The Planning Board received complaints and observed vehicles (cars and a truck) parked within the Town's right-of-way, in violation of Article 6, Sections 9 and 23 of the General Bylaw. **It has since been reported that the vehicles have been removed,**

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- There shall be paving and suitable drainage under any area where cars will be stored or parked, even for a brief time.

Any signage for this business must comply with Section 6.3 of the Zoning Bylaw, and a permit is required. **As indicated in your letter of July 22, 2010, the special permit decision to allow construction of a two-story automobile salesroom and office was never acted upon, and therefore the Special**

Permit (and associated conditions) is null and void. Town Counsel also confirmed the fact that, if a Special Permit is not acted upon, the permit is considered null and void.

The APEX used car sign is from a previous tenant and should be removed (Section 6.3.1.4 of the Zoning Bylaw).

It has since been reported that the APEX used car sign was removed.

7. Lighting

Exterior lighting for the entire property does not comply with Section 3.8.1.5 of the bylaw which states: "Exterior lighting – No exterior lighting, or other street lighting approved by the SELECTMEN, shall shine on adjacent properties or towards any STREET in such a manner as to create a nuisance or hazard."

Some of the lighting is shining onto adjacent properties. Since business is not conducted on the property after sunset, except for a short winter period. The Planning Board questions the number of lights present and their lumen output. With the exception of low lumen security lights, all other lights should be turned off after the business activity is concluded each day.

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In its Decision dated June 27, 1988, the Zoning Board of Appeals granted a Special Permit to allow construction of a two-story automobile salesroom and office; the construction of an attached garage; and associated parking areas. The decision included the following conditions relative to sign illumination:

- Present and future lighting is to be so configured that no direct light shall fall outside of the property lines.

As indicated in you letter dated July 22, 2010, it is our understanding that you have contacted Hudson Light and Power to investigate options that may exist with regard to the current outside lighting. We look forward to hearing the response from Hudson Light and Power so that outside lighting may be brought into compliance with the bylaw. Lighting as of today 2/18/2022 still shines on the street and abutters properties. Not full cut off

8. General Site Conditions/Requirements

In its Decision dated June 27, 1988, the Zoning Board of Appeals granted a Special Permit to allow construction of a two-story automobile salesroom and office; the construction of an attached garage; and associated parking areas. The decision included the following conditions:

- Monitoring wells to check ground water contamination are to be installed in positions acceptable to the Board of Health, and monitoring is to be carried out to their satisfaction.

Please confirm the existing of the required monitoring wells.

- There shall be a fifty (50) foot radius circular buffer zone within Lot B with its center located on the southeast corner of the property within which no parking or loading areas may be located.

Existing site conditions do not comply with this condition.

- The fifteen (15) foot landscaped buffer area on Great Road shall be constructed in accordance with Section VI-C-2-4. This will necessitate the relocation of the parking area.

A fifteen (15) foot landscape buffer area between Great Road does not exist.

- The drainage plan including the use of grease traps on both floor and storm drains must be detailed on the revised site plan and approved by the Zoning Board of Appeals in consultation with both the Planning Board and Board of Health.

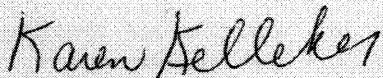
Please confirm compliance with a drainage plan, including the use of grease traps.

- There shall be paving and suitable drainage under any area where cars will be stored or parked, even for a brief time, and this area is to be shown clearly on revised site plans.

Existing site conditions do not comply with this condition. The Planning Board observed vehicles parked on unpaved surfaces throughout the property.

As indicated in your letter of July 22, 2010, the special permit decision to allow construction of a two-story automobile salesroom and office was never acted upon, and therefore the Special Permit (and associated conditions) is null and void. Town Counsel also confirmed the fact that, if a Special Permit is not acted upon, the permit is considered null and void.

Sincerely,



Karen Kelleher
Planning Coordinator

The conditions above are all items that should be required if any Special Permit was applied for especially items like pavement under all vehicles even if temporarily parked on. Are there any monitoring wells on the property and if not, Why?

cc: Craig Martin, Building Commissioner



**Town of Stow
Board of Health
380 Great Road
Stow, Massachusetts 01775
978-897-4592
978-897-7631
FAX 978-897-4615**

August 26, 2008

Richard Presti
585 Massachusetts Avenue
Acton, MA 01720

Re: 84 Great Road, Stow, MA 01775

Dear Rich:

The Fire Chief and I investigated a complaint regarding the above mentioned property on August 18, 2008. Jeff Downs, the tenant at the property, was available to assist us at the time of the inspection. Mr. Downs accepted the responsibility for the scrape material, debris, rubbish, and tires accumulated on the side and rear yard. The Fire Chief discussed the storage and safety of the flammable materials at the site. Acting under 105 CMR 410.000 State Sanitary Code Chapter 2: Minimum Standards For Fitness For Human Habitation I verbally ordered the removal of the following: solid waste materials, scrape metals, rubbish, debris, and tires located on the site. I also required the manifests be submitted to the Board of Health office to verify the proper disposal of the materials. On August 19, 2008 Mr. Downs attended a meeting in the Town Building with the Building Inspector, the Fire Chief, and myself to determine the feasibility of running a business at 84 Great Road. After discussing all the issues, the likelihood of a business operation being run at 84 Great Road is doubtful.

A follow-up inspection of the property on August 22, 2008 showed that Mr. Downs had the scrape metal, debris, and rubbish removed from the yard. The manifests from William Reisner Corporation, Clinton, MA, were submitted to me as evidence of the proper disposal of the materials. We discussed the removal of the seventy to eighty (70/80) tires remaining on the property.

Another meeting at the Town Building on August 25, 2008 between you, Mr. Downs, the Building Inspector, the Fire Chief, and myself further nullified any business locating at 84 Great Road due to the conditions of the lease.

Commonwealth of
Mass Appeal
09/16/2021

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCRreporter@sjc.state.ma.us

20-P-611
20-P-696

Appeals Court

KATHLEEN A. FISHER vs. PRESTI FAMILY LIMITED PARTNERSHIP & another¹ (and a consolidated case²).

Nos. 20-P-611 & 20-P-696.

Suffolk. March 11, 2021. - September 16, 2021.

Present: Wolohojian, Englander, & Hand, JJ.

Practice, Civil, Zoning appeal. Zoning, Appeal, Appeal to board of appeals, Board of appeals: decision, Board of appeals: jurisdiction, Timeliness of appeal, Enforcement.

Civil action commenced in the Land Court Department on January 9, 2018.

Civil action commenced in the Superior Court Department on January 3, 2018.

After consolidation, the cases were heard by Howard P. Speicher, J., on a motion for summary judgment.

Mark Bobrowski for Kathleen A. Fisher.
Robert E. McLaughlin, Sr. (John G. Hofmann also present) for Presti Family Limited Partnership & another.

¹ Zoning Board of Appeals of Stow.

² Presti Management Corporation vs. Zoning Board of Appeals of Stow & another.

WOLOHOJIAN, J. These two cases are before us on appeal from judgments entered following the decision of a Land Court judge allowing Presti Management Corporation's (Presti) motion to dismiss or, in the alternative, for summary judgment.^{3,4} In essence, the question presented is whether the Land Court judge erred in concluding that, as a matter of law, Kathleen A. Fisher's appeals to the zoning board of appeals (board) of Stow (town) from the zoning enforcement officer's denial of her requests for zoning enforcement were untimely, thus depriving the board of jurisdiction. We conclude that although the zoning enforcement officer's letter of May 26, 2017, denying Fisher's requests for zoning bylaw enforcement against certain uses of property owned by Presti was an appealable decision from which Fisher did not timely appeal, her failure to appeal that decision did not foreclose her from pursuing the same or related

³ We note that the motion was filed by Presti Family Limited Partnership, but that the judge's decision refers to the motion as that of Presti Management Corporation. Our use of "Presti" throughout this decision encompasses both Presti Family Limited Partnership and Presti Management Corporation, general partner of Presti Family Limited Partnership.

⁴ The action underlying appeal no. 20-P-611 was brought in the Land Court, and the action underlying appeal no. 20-P-696 was brought in the Superior Court. At the request of the parties, the cases were consolidated, and a judge of the Land Court was designated pursuant to G. L. c. 211B, § 9, to hear the Superior Court case along with the Land Court case. Judgment entered in the Superior Court and in the Land Court. The two cases have been joined for appeal.

relief through her timely appeals from the zoning enforcement officer's letters of June 30, 2017, and August 7, 2017, denying Fisher's subsequent requests for zoning enforcement against ongoing uses of Presti's property. We accordingly vacate the judgments.

Background. We review a summary judgment motion de novo, looking at the summary judgment record in the light most favorable to the nonmoving party. See 81 Spooner Rd., LLC v. Zoning Bd. of Appeals of Brookline, 461 Mass. 692, 699 (2012); Central St., LLC v. Zoning Bd. of Appeals of Hudson, 69 Mass. App. Ct. 487, 491 (2007).

On April 7, 2017, Fisher sent a letter (April 7 letter) requesting zoning bylaw enforcement to Craig Martin, the town building commissioner and zoning enforcement officer. She asked that Martin issue a "cease and desist order for the commercial traffic being generated [by Presti and his commercial tenants] along [her abutting] property." Fisher then pointed to certain provisions of the zoning bylaw, and asserted that Presti's use of its property had changed over time without Presti obtaining any special permits. Fisher also noted that vehicles using the Presti property had damaged three fences on her property.⁵

⁵ Fisher enclosed correspondence between her and Presti in which she had asked that commercial use of Presti's property stop. This correspondence is not in the appellate record.

Without having yet received a response to her April 7 letter, Fisher again wrote to Martin on May 22, 2017 (May 22 letter) "to ask that [he] stop the commercial traffic that is growing and increasingly dangerous and is in violation of the zoning regulations in [t]he [t]own." Fisher noted that Presti's property was "business zoned only and not commercial business or construction zoned," and identified several additional specific concerns about Presti's property and the activities being conducted there: (1) damage to the three fences on her property, some of which was caused by a Presti tenant that operated an automobile dealership; (2) the clearing of land and leaving of construction debris by another commercial tenant; (3) the removal of soil and trees from Presti's property, resulting in a loss of buffer between the business properties and Fisher's residential one; (4) removal of soil near the conservation land at the rear of Presti's property, and operation there of a commercial trucking and trash operation; (5) the parking by Presti's employees and tenants along Fisher's fence, an area that was a required buffer; (6) the increased noise, vibration, and shaking of Fisher's home due to the commercial uses of Presti's property; (7) the increased dust and dirt; and (8) the noise and traffic beginning as early as 5:30 A.M. seven days per week. Fisher closed the May 22 letter with the following:

"Please respond as to the status of the cease and desist order or please give me the proper documentation showing why you and the town believe [Presti] has the right to start up a commercial operation abutting residential properties without notice from [t]he [t]own

"I have owned my property longer than [Presti] and none of this is a grandfathered use."

On May 26, 2017, Martin responded in writing (May 26 letter) to both of Fisher's letters, which he identified as "requesting cease [and] desist action to stop commercial traffic on the [Presti] property" -- a characterization with which Fisher does not disagree. Martin noted that he had met with Richard Presti and had inspected the property. He stated that Presti's tenants were using the property to store "trucks, cars, snowplowing equipment, trailers, building [and] construction materials, piles of cord wood, wood chippers, clean dumpsters and school buses." But Martin concluded that these "types of uses" were "grandfathered,"⁶ as he had concluded several years earlier, in 2010.⁷ Martin also stated that he expected that

⁶ Given its origins, we use the term "grandfather" only where necessary to reflect what is in the record. See Comstock v. Zoning Bd. of Appeals of Gloucester, 98 Mass. App. Ct. 168, 172 n.11 (2020).

⁷ Martin had reached his 2010 conclusion in response to an inquiry from Presti. Specifically, Martin had stated, in a letter to Presti dated July 13, 2010:

"After researching the building department files, the January 19, 2001 [z]oning [b]oard of [a]ppeals decision relative to the property and conducting a site visit on July 8, 2010 to view the stored materials which consisted

traffic on and off Presti's property would be variable but that, in any event, he had no jurisdiction or control over traffic. Finally, Martin stated that he had met with Richard Presti to evaluate the excavation activity near the conservation land and that he (Martin) had provided direction on protecting the adjacent land and providing stabilization and erosion control. Martin's May 26 letter concluded with an invitation to Fisher to contact the building department should she need any further information. The May 26 letter did not inform Fisher that it was an appealable decision or what the process was for appeal. Nonetheless, Fisher acknowledged in her deposition that she "understood [Martin] was not going to give [her] the relief [she was] seeking." Fisher did not file an appeal to the board within thirty days of the May 26 letter.

Fisher next wrote to Martin on June 8, 2017 (June 8 letter). Fisher repeated her various complaints about the uses of Presti's property, and tied them to specific provisions of the town's zoning bylaw. She wrote that she did not believe the uses were "grandfathered" and that she had been unaware of

of pickup trucks, cars, snowplowing equipment, trailers, building materials, piles of cord wood, wood chipper and school buses, it is my determination that these types of uses are the same or consistent with the past uses of the site recognized as grandfathered uses by the [z]oning [b]oard of [a]ppeals and that no [s]pecial [p]ermits are required."

Martin's 2010 letter previously concluding they were protected. She also identified several new issues: installation of a new garage door and renovation of the inside of the building on Presti's property (for which she requested copies of all permits issued), excessive lighting on the property, an old engine stored in the open, and a conflict that had arisen when she tried to make a video recording of activity on Presti's property.

Martin responded in writing on June 30, 2017 (June 30 letter). Martin stated he had been unable to find any building permits for the building's interior wall construction and garage door. He provided further information about the soil removal and also stated that the volume of soil removed was below that requiring a permit, and that he had scheduled a meeting with Presti to discuss the remaining items in Fisher's June 8 letter. Martin further stated, "[i]f in the end you do not accept my conclusions you may file an appeal with the [z]oning [b]oard of [a]ppeals."

Almost one month later, on July 24, 2017, counsel for Fisher wrote to Martin, asking that Martin provide his "opinion concerning all the items specified in Ms. Fisher's correspondence. Specifically, Ms. Fisher's correspondence requests zoning enforcement for all the current uses by all the tenants at the [Presti] [p]roperty."

On July 31, 2017, Fisher appealed Martin's June 30 denial of zoning relief to the board.

On August 7, 2017, Martin responded to the letter from Fisher's counsel (August 7 letter), and provided specific reasons for his decision not to issue a cease and desist order for the five activities identified in Fisher's June 8 letter: (1) based on his own knowledge and observations of the Presti property since 1946, Martin concluded that "automotive display, sales, service, tire repair, body shop, landscape equipment storage, and school bus parking" were longstanding uses; (2) a named construction company was not a tenant at Presti's property; (3) lighting was used for security and was "Full Cut Off, LED"; (4) Martin found no violations regarding "vehicle parking, landscaped buffer [and] traffic on and off the site"; and (5) "environmental concerns, odor, gas or oil storage should be" addressed to other town departments. Martin also concluded that personal disputes between Fisher and Richard Presti were outside Martin's jurisdiction. On August 30, 2017, Fisher filed with the board an appeal from Martin's August 7 letter.

Fisher's appeals from Martin's June 30 and August 7 letters were consolidated by the board. After a hearing on both appeals, the board issued a detailed decision in which it affirmed in part and reversed in part Martin's denials of Fisher's requests for zoning enforcement. As set forth in more

detail in the margin,⁸ the board determined that certain uses of Presti's property were neither permitted nor "grandfathered"; in those instances, the board reversed Martin's decisions and determined that Presti needed to apply for special permits or, failing such application, to cease and desist the activity. The board concluded that the remaining uses were lawfully nonconforming or else did not constitute a change or expansion of a preexisting nonconforming use.

Fisher appealed the board's decision to the Land Court, while Presti appealed to the Superior Court. See G. L. c. 40A, § 17. As we noted above, those actions were consolidated and assigned to a judge of the Land Court, where Presti moved to dismiss, or in the alternative, for summary judgment, on the ground that Fisher's appeals to the board were untimely.⁹ Fisher opposed the motion, as did the town defendants. Ultimately the

⁸ Specifically, the board determined that the following were not permitted or "grandfathered": (a) the outside display or storage of vehicles other than automobiles, (b) the contractor, landscaper and tree business, with associated storage of equipment, including containers, and (c) lighting fixtures that did not comply with the zoning bylaw.

⁹ Presti did not challenge the timeliness of Fisher's appeals before the board, but instead raised the issue for the first time before the Land Court judge. Neither party has argued or briefed the question whether Presti's failure to challenge the timeliness of the appeals before the board resulted in waiver. Accordingly, we do not consider this interesting question, the answer to which may turn on whether the deadline imposed by G. L. c. 40A, § 15, is a requisite for a board of appeals to have subject matter jurisdiction.

judge concluded that Fisher's April 7 and May 22 letters were zoning enforcement requests and that Martin's May 26 letter in response was an appealable decision as to those requests. It was undisputed that Fisher did not timely appeal Martin's May 26 letter. The judge ruled that Fisher's subsequent letters to Martin could not, in essence, revive or extend the appeals period and, accordingly, the judge concluded that the appeals were untimely and the board's decision was a nullity.

Before us now are Fisher's appeals, in which the town has not joined.

Discussion. 1. Timeliness of appeal. There is no dispute that Fisher failed to appeal to the board within thirty days of Martin's May 26 letter; there is equally no dispute that she did appeal within thirty days of Martin's June 30 and August 7 letters. The question is whether Martin's May 26 letter was an appealable decision for purposes of G. L. c. 40A, § 8, such that the consequences of Fisher's failure to appeal from it could not be bypassed by her subsequent letters seeking similar zoning enforcement. See Gallivan v. Zoning Bd. of Appeals of Wellesley, 71 Mass. App. Ct. 850, 857 (2008).

Fisher argues that Martin's May 26 letter was not an appealable decision for two reasons. First, she contends that her April 7 and May 22 letters (to which the May 26 letter responded) were limited to requesting zoning enforcement

regarding "commercial traffic" on Presti's property. Second, she contends that the May 26 letter was not sufficiently definitive to constitute an appealable decision. In the alternative, Fisher argues that her subsequent zoning enforcement requests were not foreclosed to the extent they raised new issues not encompassed in her April 7 and May 22 letters. We address each of these contentions in turn.

2. Nature and scope of Fisher's April 7 and May 22 letters. Under G. L. c. 40A, § 7, any person may make a request in writing to the building inspector (or other officer charged with zoning enforcement) to enforce zoning ordinance or bylaw "against any person allegedly in violation of the same." We agree with the Land Court judge that Fisher's April 7 and May 22 letters were written requests for zoning relief. Fisher does not now contend otherwise. However, she argues that she was only seeking zoning enforcement with respect to "commercial traffic" on Presti's property.¹⁰ We disagree.

In her April 7 letter, Fisher stated that she was "asking the [t]own . . . to enforce the zoning bylaws on [Presti's]

¹⁰ Fisher appears to have taken a more aggressive position before the Land Court judge, arguing that the April 7 and May 22 letters were not zoning enforcement requests at all. On appeal to this court, her position is more limited in the sense that she acknowledges that the letters were zoning enforcement requests, but argues that the scope of the requests was limited to seeking to stop commercial "traffic" on the property.

properties" and to "issue a cease and desist order for the commercial traffic being generated along [her] property." Fisher did not define what she meant by "commercial traffic," but she also referred to it as "commercial use" of the property. Fisher's specific concerns about the "commercial use" were contained in a letter she sent to Richard Presti and that she attached to her April 7 letter. Fisher, though, has not included the attachment in the appellate record; nor does it appear that she included it in the summary judgment record below. Thus, although Fisher uses the terms "commercial use" and "commercial traffic" interchangeably in her April 7 letter, it is not altogether apparent what she intended the scope of either term to be.

Regardless, in her May 22 letter, Fisher characterized her April 7 letter as seeking a "cease and desist order on commercial activity on [Presti's] properties." (emphasis added). "Commercial activity" is synonymous with "commercial use" and certainly broader than "commercial traffic." Moreover, Fisher clarified the scope of her request by enumerating a series of specific concerns going beyond commercial "traffic," including damage to fences on her property, removal of soil and trees, removal of a buffer, operation of a commercial trucking and trash operation, "and who knows what else." As before, Fisher also requested that a cease and desist order be issued

because "commercial use does not belong in the business zoned area" (emphasis added). And she closed her May 22 letter by noting that Presti did not have "the right to start up a commercial operation abutting residential properties" (emphasis added). Thus, although it is true that Fisher requested zoning enforcement with respect to commercial traffic on Presti's property, her request was not confined to traffic alone. Fisher repeatedly made reference to commercial "use," "activity," and "operation" -- all terms extending beyond traffic. Moreover, she identified specific uses of the Presti property, most of which were not traffic-related.

3. Nature and scope of Martin's May 26 letter. Similarly, although it is true that Martin referred to Fisher's letters as requesting a cease and desist order to stop "commercial traffic," the remainder of his May 26 letter makes clear that he understood Fisher was more broadly challenging the commercial uses of Presti's property. Among other things, Martin stated that he inspected the property "regarding current uses and traffic" (emphasis added). He identified several nontraffic uses of the property, including "storing materials which consist of trucks, cars, snowplowing equipment, trailers, building [and] construction materials, piles of cord wood, wood chippers, clean dumpsters and school buses." Martin also stated that he had evaluated the excavated area of the Presti property.

Furthermore, Martin enclosed and referenced his earlier letter of July 13, 2010, to Presti in which Martin had concluded that storage of various materials¹¹ was "grandfathered." In short, Martin's May 26 letter indicated that he understood Fisher to have challenged various commercial uses of Presti's property, and not simply traffic, and the scope of his response was consistent with the scope of her zoning enforcement requests.

What remains is whether Martin's May 26 letter constituted an appealable decision under G. L. c. 40A, § 8,¹² so as to trigger the thirty-day appeal period applicable under G. L. c. 40A, § 15.¹³ Relying on Pepin v. Belrose, 15 LCR 284, 286 (2007), the Land Court judge understood this question to turn on whether Martin's May 26 letter was "sufficiently definitive to constitute an 'order or decision,' tantamount to a refusal to enforce the [b]ylaw." Neither the Supreme Judicial Court nor the Appeals Court has used this precise formulation. Instead, our appellate cases have spoken in terms of whether the

¹¹ The "stored materials" listed in the 2010 letter consisted of "pickup trucks, cars, snowplowing equipment, trailers, building materials, piles of cord wood, wood chipper, and school buses."

¹² General Laws c. 40A, § 8, provides that an appeal may be taken by any person aggrieved "by reason of his inability to obtain a permit or enforcement action."

¹³ General Laws c. 40A, § 15, provides that any appeal under § 8 "shall be taken within thirty days from the date of the order or decision which is being appealed."

aggrieved party has received "adequate notice" of the adverse decision and therefore has the ability to comply with the thirty-day appeal period. See Connors v. Annino, 460 Mass. 790, 796 (2011) ("Where the 'decision' of the building commissioner is the issuance of a building permit, it is reasonable and consistent with the statutory scheme to require the aggrieved party to comply with the route prescribed in §§ 8 and 15 if the party has adequate notice of the permit's issuance and therefore an ability to meet the thirty-day limitation period imposed by those two sections"); Gallivan, 71 Mass. App. Ct. at 859-860. Although differently phrased, the inquiry under either formulation is in substance essentially the same: that is, did a zoning enforcement officer's written communication adequately notify the recipient of the officer's adverse decision. If it did, then that is the date from which the thirty-day appeals period runs.¹⁴ See Vokes v. Avery W. Lovell, Inc., 18 Mass. App. Ct. 471, 479 (1984) (concluding that "the date on which a zoning enforcement officer responds in writing to a § 7 request for enforcement creates the appealable decision contemplated by § 8 and becomes the date for measuring the thirty-day appeal period set forth in § 15").

¹⁴ There is no claim in this case that Fisher did not receive Martin's May 26 letter.

By this measure, Martin's May 26 letter was an appealable decision for purposes of G. L. c. 40A, § 8. The May 26 letter informed Fisher that Martin had looked into her complaints and that the commercial uses of Presti's property were preexisting nonconforming uses. See G. L. c. 40A, § 7 (zoning enforcement officer "shall notify, in writing, the party requesting such enforcement of any action or refusal to act"). This was sufficient to put her on notice that she had not obtained enforcement action with respect to the commercial uses and activities identified in her April 7 and May 22 letters. See G. L. c. 40A, § 8. Fisher does not contend, nor does the summary judgment record contain any information to suggest, that the May 26 letter was inadequately worded to inform her that Martin refused her requested zoning enforcement. To the contrary, her position at summary judgment was that the letter "speaks for itself," and she acknowledged that she "understood [Martin] was not going to give [her] the relief [she was] seeking." Although it is true that Martin invited Fisher to contact the building department if she needed further information, and it is also true that he did not explicitly inform her that she had a right to appeal, the relevant inquiry is whether Fisher received adequate notice that Martin was refusing the enforcement relief Fisher had requested in her April 7 and May 22 letters. See Connors, 460 Mass. at 797;

Miles-Matthias v. Zoning Bd. of Appeals of Seekonk, 84 Mass. App. Ct. 778, 782-783 (2014).

4. Effect of failure to appeal within thirty days of Martin's May 26 letter. Where an aggrieved party has adequate notice of the issuance of a building permit, "the party 'may not lawfully bypass [a timely appeal to the zoning board of appeals] and subsequently litigate the question by means of a request for enforcement under G. L. c. 40A, § 7'" (emphasis added). Connors, 460 Mass. at 796, quoting Gallivan, 71 Mass. App. Ct. at 857. The question presented here is whether a similar rule should apply to successive requests for zoning bylaw enforcement challenging ongoing uses of property. We think it should not. Except for the "indirect effects of the statute of repose provisions set forth in G. L. c. 40A, § 7,"¹⁵ the Legislature has

¹⁵ General Laws c. 40A, § 7, provides in relevant part:

"If real property has been improved by the erection or alteration of [one] or more structures and the structures or alterations have been in existence for a period of at least [ten] years and no notice of an action, suit or proceeding as to an alleged violation of this chapter or of an ordinance or by-law adopted under this chapter has been recorded in the registry of deeds for the county or district in which the real estate is located or, in the case of registered land, has been filed in the registry district in which the land is located within a period of [ten] years from the date the structures were erected, then the structures shall be deemed, for zoning purposes, to be legally non-conforming structures subject to section 6 and any local ordinance or by-law relating to non-conforming structures."

placed "no express statutory limitation on when [an] enforcement request need be filed." Barkan v. Zoning Bd. of Appeals of Truro, 95 Mass. App. Ct. 378, 385 (2019). This makes sense because uses of real property may evolve or change over time, an aggrieved person may not know of the precise contours, extent, or even existence of all uses of property at the same point in time, and because towns have an ongoing interest in the use of property within their boundaries. See Connors, supra at 798 & n.9. In addition, we have found nothing either in our case law or in c. 40A that forecloses multiple or successive requests for zoning bylaw enforcement by different aggrieved persons (such as other abutters).¹⁶ Moreover, a property owner should not acquire

¹⁶ Indeed, G. L. c. 40A, § 8, appears to provide a right to appeal a zoning officer's enforcement denial only to persons who initially sought such relief from the officer: "any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer" may appeal (emphasis added). Other equally aggrieved persons (such as other abutters) do not appear to have a right to appeal an enforcement officer's decision denying zoning enforcement if they did not join in the original enforcement request. The statutory language appears to contemplate, therefore, that each abutter must make his or her own enforcement request in order to seek zoning board review. The language of § 8 stands in contrast to that contained in §§ 13 and 17, neither of which contains the limiting pronoun "his," but instead speak only of "any aggrieved person." We merely here note the difference in language between § 8 and §§ 13 and 17, without intending to offer any view on the question left open in Green v. Zoning Bd. of Appeals of Southborough, 96 Mass. App. Ct. 126, 129 (2019) (open question whether aggrieved person who did not join in another's appeal to zoning board could nonetheless appeal board's decision under § 17).

a permanent right to engage in ongoing uses that violate zoning bylaws simply because one aggrieved person failed to timely appeal the zoning enforcement officer's denial of zoning enforcement. Accordingly, apart from the statute of repose contained in G. L. c. 40A, § 7, and the preclusive effect of a decision by a zoning board or of a court (none of which are at issue here), nothing prevented Fisher from renewing her requests for zoning enforcement as to ongoing use of Presti's property, and she was entitled to appeal within thirty days from Martin's denials of those subsequent enforcement requests.¹⁷

Conclusion. Accordingly, we vacate the judgments and remand the matters for further proceedings consistent with this opinion.

So ordered.

¹⁷ There is no suggestion in this case that Fisher's multiple letters to Martin, or her failure to timely appeal Martin's initial response, were anything other than the imperfect actions of an unrepresented person attempting to navigate the system to obtain review of her concerns. This is not a case of an abutter making successive filings with an improper motivation or purpose. Nor should our opinion be read to sanction such situations.

Thank You